

New York Tenants' Rights



**All the plain-English legal information you
need to deal with:**

- repairs & services
- rent-stabilization and rent-control
- security deposit rip-offs
- discrimination & harassment
- roommates & sublets
- evictions & terminations



by Attorney Mary Ann Hallenborg
author of *The New York Landlord's Law Book*

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premier publisher of do-it-yourself law books."*

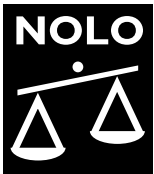
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1st edition

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by Mary Ann Hallenborg





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The information in this book is as up to date and accurate as we can make it. But it's important to realize that the law changes frequently, as do fees, forms and procedures. If you handle your own legal matters, it's up to you to be sure that all information you use—including the information in this book—is accurate. Here are some suggestions to help you:

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Finally, we believe accurate and current legal information should help you solve many of your own legal problems on a cost-efficient basis. But this text is not a substitute for personalized advice from a knowledgeable lawyer. If you want the help of a trained professional, consult an attorney licensed to practice in your state.

1st edition

New York Tenants' Rights

by Mary Ann Hallenborg



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Dedication

This book is dedicated to the many tenant advocates who have tirelessly fought, in Albany, in the City Council and in the courts, to secure the important and significant legal rights New York tenants now enjoy.

Acknowledgments

My gratitude to everyone at Nolo for providing me with another opportunity to translate New York landlord-tenant law into plain English. Thanks especially to Marcia Stewart for gracefully shepherding this book through two long years of writing and production. Her masterful editing is just one of the gifts she brings to the authors who are lucky enough to work with her. I am also grateful to legal editor Janet Portman for her keen legal insights and helpful suggestions on the manuscript. Her ideas made this a better book. Thanks too, to Terri Hearsh, whose graphic design skills and attention to detail enhance every page of this work. Thanks also to Ken Armistead for his beautiful cover illustration of New York.

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Appendix A

Resources for New York Tenants

Appendix B

Sample DHCR and Other Government Forms

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Introduction

Being a New York tenant can be a challenging experience. High rents, mediocre service and excessive noise are often the norm, rather than the exception, particularly in New York City's tough rental market. Fortunately, federal, state and local laws and regulations give New York tenants a bundle of legal entitlements, such as the right to privacy, to a safe, quiet and livable home and to fair and non-discriminatory treatment from landlords.

New York Tenants' Rights covers all of the important legal issues facing New Yorkers, from hiring a broker to searching for a great rental to getting your security deposit back from the landlord after you've moved out. Whether you're a long-time New York tenant, or new to New York, this book is for you. It provides straightforward, step-by-step advice on how to avoid legal problems with your landlord and others. And when your rights are violated by landlords who don't know or simply refuse to follow the law, this book recommends a variety of strategies to remedy the situation. For example, Chapter 9 presents a range of legal options designed to compel your landlord to provide needed repairs and maintenance. Chapter 10 tackles the problem of getting relief from noisy neighbors and building equipment. Chapter 12 explains your right to sublet. Similarly, Chapter 11 discusses ways to fight landlord retaliation, harassment and discrimination.

In some cases, the best solution may be for you to write a letter to your landlord, based on one of the model letters included in this book. In other cases, your best bet may be to contact one of the many government agencies (listed in Appendix A) that specialize in enforcing laws that protect tenants from problems such as rent overcharges, unsafe or dangerous housing conditions, environmental hazards, discrimination and unscrupulous brokers, movers and attorneys. We also include samples of important government forms that permit tenants to file official complaints about real estate brokers, landlord rent overcharges, service problems and more, and explain how to obtain the latest versions of the forms. In a few cases, you may need to seek legal assistance. Chapter 19 explains how to find the legal expertise you need from a community legal services center or private attorney.

A special word to tenants in New York City and other areas covered by rent control and rent stabilization: It's important to understand that rent laws and regulations affect more than just the amount of

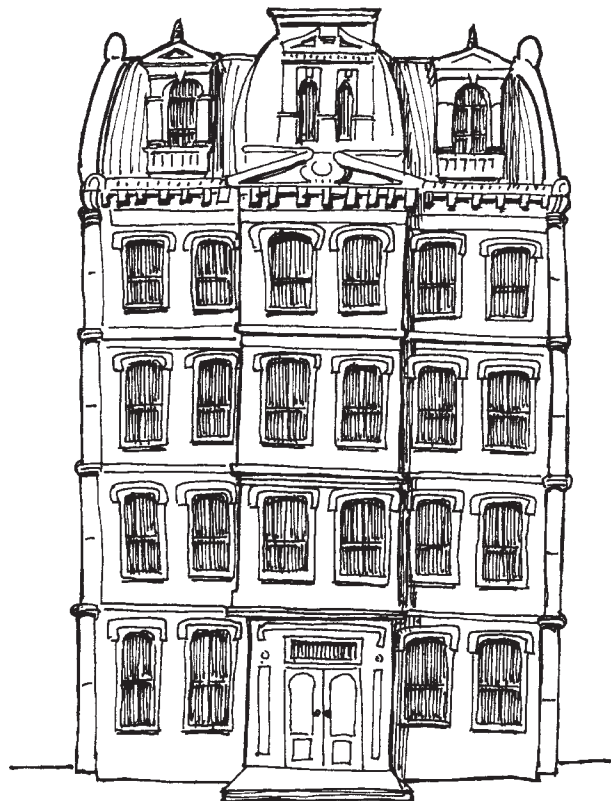
rent a landlord may charge. Many of the legal protections explained in this book have a special twist when applied to rent-regulated apartments.

Rent laws and regulations also govern:

- the services that must be provided in your apartment and your building
- the acceptable grounds upon which a landlord may end or refuse to renew a tenancy
- the amount of notice, or warning, that a landlord must give a tenant before terminating a tenancy and the language that must be used when writing a termination notice
- the amount of your security deposit and whether the landlord must pay interest on it, and
- your right to sublet your apartment.

Throughout this book, rent-regulated tenants will find special notes wherever it's likely that your status as a rent-regulated tenant will affect the main discussion. Chapter 4 is devoted entirely to rent control and rent stabilization, and explores your rights and protections in depth.

Note: This book doesn't cover mobile homes, hotels, lofts or commercial property.



Abbreviations Used in This Book

Throughout this book, you will find references to various statutes, regulations and court decisions that delineate and explain your legal rights and responsibilities. Most of these legal references contain standard abbreviations that we explain below. If you want to read the complete law or case (or feel like digging deeper into a particular issue), Chapter 19 tells you where you can find relevant laws, cases and other legal resources.

New York State Statutes

BCL	Business Corporation Law
CPLR	Civil Practice Laws and Rules
Corrections L.	Corrections Law
ETPA	Emergency Tenant Protection Act
Env.Cons. L.	Environmental Conservation Law
Exec. L.	Executive Law
GBL	General Business Law
GCL	General Construction Law
GOL	General Obligations Law
HRL	Human Rights Law
Lab.L.	Labor Law
Mil.L	Military Law
MDL	Multiple Dwelling Law
MRL	Multiple Residence Law
Partnership L.	Partnership Law
Pub. Health L.	Public Health Law
RPAPL	Real Property Actions and Proceedings Law
RPL	Real Property Law
Unconsol.	Unconsolidated Laws

New York State Regulations

NYCRR	New York Code of Rules and Regulations
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New York State Rent Regulations

ETPR	Emergency Tenant Protection Regulations
RSC	Rent Stabilization Code
Rent & Evict. Regs.	Rent and Eviction Regulations

NYC Rent & Evict. Regs.	New York City Rent and Eviction Regulations
-------------------------	---

New York City Laws and Regulations

NYC Admin. Code	Administrative Code of the City of New York
RSL	New York City Rent Stabilization Law
NYCCR	New York City Compilation of Rules
HMC	New York City Housing Maintenance Code
NYC HRL	New York City Human Rights Law

Federal Statutes

U.S.C.	United States Code
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Federal Regulations

CFR	Code of Federal Regulations
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Cases

N.Y. & N.Y.2d	New York Reports, New York Court of Appeals (New York State's highest court)
A.D. & A.D.2d	Appellate Division Reports, New York Appellate Division
Misc., & Misc.2d	Miscellaneous Reports, New York County and Supreme Court, New York City Appellate Term, Civil and Criminal Court
N.Y.S. &	New York Supplement, All New York Courts
U.S.	United States Reports, United States Supreme Court
F.2d, F.3d	Federal Reports, United States Court of Appeal
F.Supp.	Federal Supplement, United States District Court
NYLJ	New York Law Journal, New York Court of Appeals, Appellate Division, Appellate Term, and decisions from the trial courts of New York City and surrounding counties.
WL	Westlaw, an electronic database

Guide to Icons Used in This Book



This icon refers you to organizations, books and other resources for more information about the particular issue or topic discussed in the text.



This icon alerts you to material that applies exclusively to New York City properties.



This icon alerts you to special rules that apply only to rent-controlled or rent-stabilized rental units.



This icon refers you to related information in another chapter of this book.



This is a caution to slow down and consider potential problems you may encounter when renting out apartments and residential property.



This icon means that you may be able to skip some material that doesn't apply to your situation.



This icon alerts you to a practical tip or good idea.



This icon lets you know when you probably need the advice of a lawyer who specializes in landlord-tenant law.





Finding a Place to Rent

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7 hroughout most of New York, there are simply more people looking for apartments than there are available units. Snaring a great rental requires a strategy, lots of legwork, good timing and, of course, a strong application. The vacancy rate in most areas of New York is so low that landlords can afford to be picky about their tenants. So expect prospective landlords to require a written rental application and to conduct a thorough investigation of your credit, employment and rental history. There are limits, however, to how far your landlord can go. Some questions and inquiries are prohibited under laws that protect your privacy and prohibit discrimination.

In this chapter, we help you design a strategy for finding an apartment or house to rent, with or without a real estate agent or apartment listing service. We explain how best to present yourself to a potential landlord in your application and why your credit report is so important. We also discuss legal and illegal grounds for rejecting tenants.



Related topics covered in this book include:

- Deciding between a lease or rental agreement and understanding important terms: Chapter 2
- Paying rent: Chapter 3
- Understanding rent control and rent stabilization laws, including what units are covered: Chapter 4
- Protecting your security deposit: Chapter 5
- Getting moved in: Chapter 6
- Understanding your apartment-sharing rights: Chapter 7
- Fair housing laws and how to deal with discrimination: Chapter 11.



Model Letters and Sample Forms in This Chapter

- Preliminary Statement of Complaint
- Rental Notes
- Rental Application
- Character Reference Letter



Before you search for an apartment, make a number of basic decisions—including how much

rent you can afford, your ideal neighborhood, how big a place you want, whether you need a fixed-term lease or a month-to-month rental agreement, how large a security deposit you can pay, whether you expect to keep a pet and anything else that's really important to you in a rental, such as a doorman. Obviously, if you're on a budget and looking for a large apartment on the Upper West Side, something will have to give. But the more specifically you can define your housing basics, the more focused your search will be.

New to New York?

If you're completely unfamiliar with New York, you're at an obvious and serious disadvantage. You simply don't have the basic information normally considered essential to locating a good place in a congenial location at a fair price. Local guidebooks can give you a good start, as can websites about the area. If you're moving to New York City, the "NYC Apartment Guide," on the New York City Rent Guidelines Board website (www.housingnyc.com), is a dependable source of basic information and tips for finding apartments in New York City. You may wish to pick up a copy of *Relocating to New York City and Surrounding Areas: Everything You Need to Know Before You Move and After You Get There*, by Ellen Shapiro (Prima Publishing).

But there's no substitute for your own legwork. Ask your friends and colleagues, walk and drive around neighborhoods, talk to local residents and shop owners, read local newspapers—do whatever else will help you get a better sense of a neighborhood or city. A good real estate broker can be invaluable.

If you're in a hurry to move, one sensible alternative is to leave your furniture in storage and stay in a hotel or take a short-term furnished rental until you find a suitable home.

A. Finding a Place to Rent

It's hard to find a rental apartment on your own—especially in New York City, where the rental housing market is perpetually tight. But since real estate brokers

and apartment finders or listing services charge big commissions, it pays to try and rent directly from the owner or landlord. In this section, we provide some tips on finding a “no-fee” rental—and, if you can’t, some advice on choosing and dealing with real estate brokers and apartment-finding services.

What type of search will work best for you will depend on a number of factors, most importantly where you want to live, your budget and how quickly you need to move. Of course, the tighter the rental market you face, the more important it will be to pursue as many search options as possible. And, it always makes sense to assertively and creatively use your own personal contacts and networks. Here’s a rundown of your choices.

1. Finding That Elusive No-Fee Rental

There are two ways to find a place to rent without paying a real estate broker’s commission or apartment finder’s service fee. One is to find a rental agent whose fee is paid by the landlord (rather than you). Landlords usually pay the real estate brokers and salespersons who work in on-site rental offices. You’ll find these offices at newly built properties and in big apartment complexes.

The more common way to find a no-fee rental is to contact and deal directly with the landlord or the landlord’s manager yourself, without a professional matchmaker. Some landlords like to show their properties themselves because they own only a few units. Landlords with bigger apartment portfolios hire individual managers or professional management companies, whose duties include leasing vacancies. Customarily, these owners, landlords and managers don’t charge new tenants a brokerage commission or fee (although it’s not illegal for them to do so, provided they are licensed by the State of New York as a broker, salesperson or apartment information vendor).



It’s illegal for landlords to charge tenants fees for rent-stabilized units. Neither the owner nor the owner’s employee may collect a finder’s fee or brokerage commission in connection with a rent-stabilized lease anywhere in the state. (See, for example, RSC § 2525.1.) However, licensed brokers, salespersons and apartment information vendors (listing services) who are unrelated to the owner may collect a fee or commission from the tenant.

You can contact landlords and managers directly by visiting or calling specific properties you are interested in or that you see advertised. If there are no vacancies, be sure to ask about other buildings they may own or manage. Another tack is to contact big property management companies that control a significant number of rental properties. You can find the names of the bigger companies just by walking or driving around and looking at the plaques posted outside apartment building lobbies. Or, check the Yellow Pages under “Real Estate Management.”



“No-fee” is a little misleading. While a no-fee rental listing means that you’re not required to pay a real estate commission, you should nevertheless be prepared to pay an application fee to cover the landlord’s costs to process your rental application and obtain a credit report. We discuss application fees in Section C2, below.

Here are some ways to find no-fee rentals.

- 1. Get the word out.** Tell friends, relatives and co-workers that you’re apartment hunting and describe what you’re looking for in terms of neighborhood, rent, number of bedrooms and other priorities. They may know someone who’s looking for a good tenant. Word of mouth is a great way to nail an apartment without paying a commission. If you’re looking for a pet-friendly rental, go to a local park or veterinarian’s office. Other pet-owners may have some good leads.
- 2. Do your own advertising.** Depending on where you’re looking, you might place your own “Apartment Wanted” ad in the newspaper or online. Think creatively—a parents’ newsletter or college alumni bulletin may be just the place to advertise your housing search. Consider posting a flyer on the bulletin board at your health club, a local library or supermarket in the neighborhood where you want to live.



Be pro-active! We know of one enterprising tenant who posted a flyer entitled “One Great Tenant” on trees and telephone poles in the neighborhood in which she wished to live. (A copy of her flyer appears below.) She received several inquiries and learned about a few great, unadvertised rentals. While this approach wouldn’t work in midtown Manhattan, there are many neighborhoods in which a flyer like this could help your search.

One Great Tenant

kind, reliable editor/writer
seeks quiet, beautiful
rental in this neighborhood

✱

separate unit (in-law or cottage)
spacious, light and private

✱

rent @ \$1,000 (negotiable)

✱

please call Sheri
555-6684

- 3. Check print and online classified ads.** Look for “no-fee” ads placed by owners, landlords or property management companies, instead of those placed by real estate brokerage agencies, which charge a fee. While big-circulation daily newspapers like the *New York Times*, the *New York Daily News* and the *Buffalo News* carry lots of ads, don’t overlook small neighborhood weeklies and ethnic newspapers that zero in on a particular community where you’d like to live. The *Village Voice* is a great source for affordable apartments in Manhattan, Brooklyn and Queens. Newspapers publish their classified ads in print, of course, but also on their websites. For example, you can view real estate ads from the *New York Times* at www.nyt.com (click Real Estate, then use the search engine), the *New York Daily News* at www.nydailynews.com (click Classifieds, then click Apartments) and the *Village Voice* at www.villagevoice.com (click Classifieds, Real Estate and then Residential for Rent). Ads go stale in a hurry, though, so make sure you respond as early in the day as possible.



Beware of “no-fee apartments” websites that promise landlord-direct apartment listings and no brokerage fees. There are usually strings attached to these deals. To view a site’s list of available units, you must pay a “membership fee” that permits access to the

site for a limited time period of 30 to 90 days. Before joining, make sure the operator of the website is a licensed real estate broker or licensed apartment information vendor. See “More Information: State Division of Licensing Services,” below, for details.

- 4. Ask your employer.** If you work for a large company, organization or institution (such as a hospital or school), your employer’s personnel director may be able to recommend landlords in the area who already rent to some of your coworkers.
- 5. Check bulletin boards in the neighborhood where you wish to live.** While it might sound old fashioned, many small landlords still post “For Rent” flyers on bulletin boards at local laundromats, yoga studios, grocery stores, coffee shops, YMCAs and other community meeting areas. While you’re there, why not post a flyer of your own?
- 6. Hit the streets.** Another way to find a no-fee rental is to literally walk through the neighborhood you are interested in and look for on-site rental offices and “For Rent” signs on properties that interest you. If possible, ask a friendly doorman or super in the area for leads, or chat up local store clerks. Newly built and renovated properties usually maintain an on-site rental office until the building is leased up. Large properties (with 100 or more units) may also have an on-site rental office.



Don’t pay “key money” to secure a rental unit.

Due to the scarcity of rental units in many parts of New York, landlords, managers, supers and even tenants sometimes demand bribes (often known as “key money”) from desperate rental applicants in exchange for leases, subleases and rental agreements. New York’s Penal Law makes it a crime for anyone who rents real property to solicit or accept a payment, on the understanding that paying will improve the odds of snaring a rental unit, or that failing to pay will make it harder. This crime, officially called “rent gouging” is a misdemeanor. If you are the victim of this form of illegal extortion, you may file a complaint with the police or the county district attorneys’ office, which may trigger criminal charges and sentencing. (Penal Law § 180.55.) Avoid problems by paying only lawful charges, such as rent, a security deposit and fees to licensed brokers, salespersons and apartment referral agencies.

Looking for a Short-Term Rental?

If you're looking for a short-term furnished rental unit, here are some rental options.

Hotel/motel suites. Many major hotel and motel chains offer weekly and monthly rates for one- and two-bedroom suites, which are essentially furnished apartments. The cost depends on the area and amenities, such as maid service.

Sublets. New York tenants who must temporarily relocate out of the area, but wish to hold on to their apartments, often sublet their units. The classified ads section of the *Village Voice* lists sublets in Manhattan, Brooklyn and Queens. A college housing office can be an excellent source of short-term rentals from professors who are going on sabbatical. Licensed brokers and apartment finding agencies also carry sublet listings you can peruse for a fee. Chapter 12 discusses the legal aspects of sublets.

Roommate services. You may be able to find a short-term rental with a current tenant who needs a roommate to meet expenses. The classified ads section of the *Village Voice* lists available "shares" in Manhattan, Brooklyn and Queens. For an annual fee of around \$250, licensed roommate referral agencies attempt to match you with a tenant based on your geographical preferences, budget and lifestyle. Roommate referral agencies are listed in the Yellow Pages and are online. Because some of these agencies have been accused of selling stale listings, check with the Better Business Bureau before you sign up (see contact information, below). Chapter 7 discusses the legal rules involving roommates.

2. Using a Real Estate Broker

The fastest, easiest but most expensive way to find an apartment is to hire an experienced, licensed real estate broker. Brokers offer a wide range of services, depending on your needs. A broker can help you pinpoint good residential neighborhoods, identify properties that offer the services and amenities you want and narrow rental listings down according to your budget and proposed moving date. A good broker not only schedules convenient appointments for you to see units that interest you, but also accompanies you to the property, to ensure access and answer questions. Once you find a great place,

a broker may help you complete your rental application and submit it to the landlord.

Licensed real estate brokers and their agents are entitled to charge you a commission for their services—usually 10% to 15% of the first year's rent. To qualify for a license, brokers must satisfactorily complete nearly 100 hours of real estate broker courses, pass a qualifying examination and have proven experience.

Personal recommendations are the best way to find a broker. If you don't have any personal tips, you'll have to do your own research. There are several ways to go.

Big brokerage companies serving Manhattan keep high profiles. You can find their ads in the real estate section of major newspapers such as the *New York Times*, *New York Daily News* and the *Village Voice*, as well as glossy weeklies such as *New York Magazine* and *Time Out New York*. If you are looking for a place outside of Manhattan, check the Yellow Pages or search online for brokers who have maintained offices in the neighborhood you wish to live for a while. They are most likely to know and understand the local market, know landlords in the areas, and narrow down listings to what best suits your needs.

Brokers will require you to sign a commission agreement, which covers the scope of services offered, the amount of the commission or fee and when it is payable. Before signing a commission agreement, do your homework:

1. Make sure that the broker's office has listings on file that match your rental profile preferences (the right neighborhood, apartment size, type of property and budget). Otherwise, you'll be wasting each other's time.
2. Check the fee. There's no legal cap on how much a broker may charge you. Depending on the strength of the market, brokerage companies usually get a fee equal to 10% to 15% of the first year's rent. That's a big range (\$2,400 to \$3,600 on a \$2,000 per month apartment), so comparison shop before signing an agreement. To earn a commission, the broker must help you find and obtain the rental unit. The fee is payable when you are offered a lease or rental agreement. If you back out of the deal through no fault of the broker, you are still legally liable to pay the broker's fee.
3. Verify that the broker is currently licensed by the state Division of Licensing Services. Sadly,

some unscrupulous operators have been known to show applicants phony apartments and abscond with the upfront fees they collect. To avoid problems, make sure that anyone who purports to be a real estate broker is in fact licensed. The same holds true for apartment listing services (discussed below). For details on checking licenses, see “More Information: State Division of Licensing Services,” below.

4. Get assurances in writing that the broker (and all salespersons who work under the supervision of the broker) will not earn a fee unless and until the landlord signs a lease or rental agreement with you on the unit of your choice. That way, you won't have to pay a fee if the landlord rejects your application.

More Information: State Division of Licensing Services

The New York State Department of State, Division of Licensing Services, oversees the licensing of real estate brokers, salespersons and apartment listing services (also known as apartment information vendors). To find out if a specific real estate broker, salesperson or apartment listing service is currently licensed, contact a Division of Licensing Services customer service representative at 518-474-4429. Or write to New York State Department of State, Division of Licensing Services, 84 Holland Avenue, Albany, NY 12208-3490. You can also check the Department of State's website to see if a particular broker or salesperson is licensed (www.dos.state.ny.us).

You may file a complaint with the Division of Licensing Services about an incompetent or untrustworthy real estate broker, salesperson or apartment information vendor or about an unlicensed person who has demanded or collected a fee in exchange for a lease or keys to a rental unit. Your complaint may be filed by phone (518-474-4429), or you may download a complaint form (“Preliminary Statement of Complaint,” DOS-1507) from the DOS website (www.dos.state.ny.us/lcns/lcnsf.html). Mail the completed form to the Division of Licensing Services Complaint Review Office, 123 William St., 19th Floor, New York, NY 10038-3804. For more information about the complaint process, or to see a sample form, see Section A4, below).

Check Complaints With the Better Business Bureau

The New York Better Business Bureau keeps tabs on real estate brokers and apartment-finding services, including sublet and roommate finders. You can check a specific agency's reputation and complaint history with the Better Business Bureau at 212-533-6200 (for a small fee) or on the Web at www.newyork.bbb.org (where the information is free).

3. Signing Up With an Apartment Referral Agency

Many landlords advertise vacancies with an apartment-finding service—a referral agency that provides apartment seekers with a centralized listing of rental units for a particular geographic area. For a set fee that runs anywhere from \$79 to a legal limit of one month's rent, you can engage one of these services to provide you with a list of available rentals in your price range, desired size and neighborhood for a specific time period, such as six months. Referral services don't necessarily provide “exclusive” listings. You might eventually find many of the units listed by these agencies yourself. But using an apartment referral agency can be a very efficient way to find listings, especially in big cities. Rather than checking the classified ad sections of several newspapers or calling landlords and managers one-by-one, using a referral service will open up a wide variety of places, letting you zero in on listings that meet your particular specifications.

You can find apartment referral agencies in “brick and mortar” storefronts as well as on the Web. There are dozens in New York City. To select the best one for you, ask these questions before you sign up:

- Is the agency licensed as an apartment information vendor with the State Division of Licensing as required under RPL § 446-b? To check, see “More Information: State Division of Licensing Services,” above.
- How many listings are available for the area or neighborhood you're interested in?
- How new are the agency's listings? Watch out for outdated lists.
- What is the fee? An agency may not lawfully charge you more than one month's rent.
- When is the fee payable?

- How long will you have access to the agency's listings? Some agencies let you look at their listings for three months, others six months.
- Do they email or fax you updates? Without updates, whatever list you do receive could be useless in a few weeks as vacancies rent up.
- What is the company's refund policy if you don't find anything to rent?
- Does the company have a satisfactory rating by the New York Better Business Bureau? See "Check Complaints With the Better Business Bureau," above, for details.

When deciding between a broker and an apartment-finding service, keep two considerations in mind. First, unlike brokers, apartment referral agencies

need not fulfill any educational requirements to be licensed. (19 NYCRR § 190.8.) All you can expect is a list of apartments. Second, brokers often accompany clients to view apartments and neighborhoods and assist with the application process. Apartment listing services do not. So if you don't know your way around town or feel shy about going it alone, using a broker may be worth the extra cost.

4. Dealing With Untrustworthy, Incompetent or Unlicensed Brokers, Salespersons or Referral Agencies

While most licensed real estate brokers, salespersons and apartment referral agencies are competent and professional, you may run across the occasional bad apple. Or worse, you'll run across a person who holds himself out as a licensed real estate agent, but really isn't. If you've wasted a lot of time or money with a completely incompetent, broker or an out and out fraud, you can turn to the State Division of Licensing Services for help.

You may file a complaint with the Division about an incompetent or untrustworthy real estate broker, salesperson, or apartment information vendor or about an unlicensed person who has demanded or collected a finder's fee in exchange for a lease or keys to a rental unit. A sample Preliminary Statement of Complaint form appears below. Your complaint may be filed by phone or by mail (see "More Information, State Division of Licensing Services," above).

If you file a complaint about a licensed broker or agent, the Division will furnish a copy of your complaint to that person for a response. Many complaints are resolved informally by a Division staffer at this stage. Complaints that can't be resolved are investigated. If your claim has merit, the Department can assess a monetary fine if the broker, salesperson or apartment information vendor violated a law or regulation. If you were financially injured, the Division may begin an administrative proceeding against the person you complained about, revoke or suspend that person's license and/or order that any illegal fee you paid be reimbursed.

If your complaint is about a person who is not licensed, the Division immediately investigates (without sending your complaint to the target for a response). If the Division finds that unlicensed business practices took place, the case is referred to the Attorney General for civil or criminal prosecution.



RETURN COMPLETED FORM TO:
 NYS Department of State
 Division of Licensing Services
 Complaint Review Office
 123 William Street, 19th Floor
 New York, NY 10038-3804
 (212) 417-5790

Preliminary Statement of Complaint

IMPORTANT: This document is subject to disclosure under the Freedom of Information Law. The person or firm you are complaining about will receive a copy of this complaint.

PLEASE PRINT OR TYPE

NAME (LAST, FIRST, M.I., SUFFIX)

ADDRESS NUMBER AND STREET

CITY

STATE

ZIP+4

COUNTY

HOME TELEPHONE

()

BUSINESS TELEPHONE

()

TYPE OF BUSINESS YOU ARE COMPLAINING ABOUT:

☐ Apartment Information Vendor/Sharing Agent
☐ Appearance Enhancement
☐ Armored Car Carrier/Guard
☐ Barber
☐ Bedding
☐ Central Dispatch Facility
☐ Coin Processor
☐ Health Club
☐ Hearing Aid Dispenser/Business

☐ Notary Public
☐ Private Investigator, Bail Enforcement Agent &
 Watch, Guard or Patrol Agency
☐ Real Estate Appraiser
☐ Real Estate Broker/Sales
☐ Security & Fire Alarm Installer
☐ Security Guard
☐ Telemarketer Business
☐ Other

Person and/or firm you are complaining about:

NAME (LAST, FIRST, M.I., SUFFIX)

ADDRESS NUMBER AND STREET

CITY

STATE

ZIP+4

COUNTY

TELEPHONE

()

Name and address of other people involved in complaint:

NAME (LAST, FIRST, M.I., SUFFIX)

ADDRESS NUMBER AND STREET

CITY

STATE

ZIP+4

COUNTY

HOME TELEPHONE

()

BUSINESS TELEPHONE

()

NAME (LAST, FIRST, M.I., SUFFIX)

ADDRESS NUMBER AND STREET

CITY

STATE

ZIP+4

COUNTY

HOME TELEPHONE

()

BUSINESS TELEPHONE

()

-OVER-

Preliminary Statement of Complaint

Amount of money involved in complaint:

List all receipts or proof of payment:

Indicate the nature of your complaint. Be exact as to facts. If you need more space, attach an additional sheet of paper:

Attach copies of contracts or supporting documentation.

Have you gone to: _____ a lawyer? _____ court or another agency?

What action are you seeking from the Department of State?

Signature

Date

B. Visiting Prospective Rentals

Whether you make an appointment to see an apartment by yourself or attend an open house with dozens of other people, here are some basic tips to visiting a potential home.

Be on your best “good tenant” behavior. Clearly understand that while you’re looking at a rental unit, the landlord or manager will be looking at and evaluating you. This means showing up on time, dressing neatly and presenting yourself as being both conscientious and agreeable.

Impress the landlord by showing up with everything you need to fill out a rental application, including references and credit information. (See Section D, below, for ideas.)

Look around carefully for tell-tale signs of problems in the rental unit and building. Check for general cleanliness and repair problems, such as torn carpet or signs of insects. But hold off on complaining about trivial things or asking for a long list of upgrades and repairs before you even get the place. Save your requests until the landlord offers you the apartment. See Chapter 6 for advice on documenting the condition of a rental unit before you sign a lease and move in. Also, see Chapter 9 for details on housing standards and landlords’ responsibilities to provide habitable housing.

Make notes as you walk around the rental unit and talk with the landlord or manager. Because it’s easy to forget important information, especially if you’re looking at lots of places, jot down details on the unit and neighborhood, such as “lots of charm and great light,” “limited counter space in kitchen” or “kid-friendly park a block away.” See the model Rental Notes, below, for ideas.

If the place looks good, take a few additional steps:

Talk with other tenants in the building. If possible, ask residents (especially the person whose unit you’re considering renting) about pluses and minuses of living in the building, including noise and security. An excellent indicator of smooth sailing is to find out how often there are vacancies in the building. A low rate of turnover suggests that tenants like living there and that the landlord has chosen good tenants who will likely be good neighbors for you.

Walk around the neighborhood. If you’re not familiar with the area, check out parking, restaurants, shops and bus and subway stops. If you’re really serious

about a place, do this both during the day and at night, and check local crime statistics (Chapter 13 explains how).

C. The Application Process

Once you’ve found a place you like, the real work begins: getting the landlord to approve your rental application. If you’ve got a sterling credit record—good for you! You should have no problem getting your application approved—assuming that five other equally qualified applicants have not already submitted an application for the same apartment. But for many tenants, the application process can turn up things you’d rather forget, such as an old student loan default or a negative reference from a former landlord whom you never got along with.

In this section, we explain what to expect from the application process and credit check, and how to best present yourself to prospective landlords. We also highlight illegal questions that violate fair housing laws.



Fill out applications only when you’re truly interested in renting a specific unit. Don’t waste your time (or money, if the landlord charges an application fee) unless you really want a place. If you are interested but wish to keep your options open, go ahead and fill out an application. Don’t worry that this will lock you into taking a place—only signing a lease or rental agreement does so.

1. Completing the Rental Application

Most landlords will want you (and all co-tenants) to fill out a written rental application with information on your employment, income, credit and financial status and rental housing history. You’ll be asked to furnish personal data, such as your current address, phone number, Social Security number and driver’s license number. It’s even legal for applications to ask whether you’ve ever filed for bankruptcy or have been sued or convicted of a crime (provided the same questions are addressed to every applicant), since this information is relevant to whether you’re likely to be a good, rent-paying tenant. Answer all questions completely and truthfully.

A sample rental application is shown below, so that you can get an idea of the information you will

Rental Notes

Address: 178 West 81st St., #4F

Contact: Emily Greenwood (Broker) Phone #: (212) 555-1212

Rent: \$3,000/month Deposit: \$3,000 Other fees: \$3,000 (broker's fee)

Term: one-year lease Date seen: February 15, 200X Date available: March 1, 200X

Brief description of rental unit and building: Sunny two-bedroom apt. in four-story
brownstone. Small kitchen & bath. Lots of charm. Great location!

Mandatory Priorities:

- ☒ Upper West Side
- ☐ Maximum \$1,800 rent (over our limit, but it's worth the price)
- ☐ View of park
- ☒ Lots of light
- ☒ Two+ bedrooms (Small bedrooms)
- ☐ Easy street parking (No-but inexpensive garage parking nearby)
- ☐ _____

Secondary Priorities:

- ☒ Hardwood floors
- ☒ Small building
- ☐ Doorman
- ☐ Fireplace
- ☐ _____
- ☐ _____

Absolute No Ways:

- ☐ High-crime area
- ☐ Run-down area
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

Other Comments: Neighbors seem very friendly. Noisy dog next door. Subway stop a
block away. Last vacancy was two years ago.

need. If your rental application looks good, many landlords will want to take the next step by calling current and former landlords and employers and checking your credit (discussed in Section E, below).

We can't overstate the importance of answering all of the questions on a rental application—and answering them honestly. Be particularly careful to disclose all of your creditors. When your landlord runs a credit check, they'll turn up anyway. Failing to disclose one or two creditors, especially those with large outstanding balances, could cast doubt on the veracity of everything on your application and disqualify you right off the bat.

Incomplete and inaccurate rental applications will almost always result in a rejection. Even if you get the place, a lie or important misstatement could come back to haunt you later on. Some leases and rental agreements permit the landlord to terminate your tenancy if the landlord later discovers that you misrepresented a material fact on your rental application—for example, if you lie and say that you never were arrested or have never declared bankruptcy.

2. Application Fees and Holding Deposits

Almost every landlord requires tenants to give a substantial security deposit. The laws concerning how much can be charged and when deposits must be returned are discussed in Chapters 5 and 18. Here we discuss some other fees and deposits that are occasionally required.

a. Application Fees

It's legal for landlords to charge rental applicants an application fee to cover the cost of a credit check and to process the application. The fee should be reasonably related to the landlord's actual costs for the credit report and other application-related expenses. A fee of around \$50–\$100 is common. Fees are higher for rentals in condos and cooperative buildings, as discussed below. Some landlords don't charge application fees, preferring to absorb the expense as they would any other cost of business.

Tenants who are trying to land an apartment in a competitive market like Manhattan, where there are more qualified applicants than vacant apartments, may apply for more than one apartment at a time hoping

to hedge their bets. Before you plunk down an application fee or one or more apartments, remember that paying an application fee is no guarantee that your application will be approved, that the landlord will hold the apartment for you or that the fee will be applied to your first month's rent. Application fees are nonrefundable—even if you are rejected. An application fee is different from a holding deposit, discussed below.

b. Holding Deposits

Sometimes, if you make a deal with a landlord but don't actually sign a lease or rental agreement, the landlord will want some type of cash deposit to hold the rental unit off the market. This might happen when the landlord wants time to do a credit check or call your references. Or, it can happen if you need to borrow money (or wait for a paycheck) to come up with enough money to cover the rent and security deposit. For example, the landlord might ask you for \$500 to hold the place until you bring your first month's rent and any deposits you agreed on, pending the results of a credit check.

If you give a landlord a holding deposit and later decide not to take the place, there is a good chance you won't get most or all of your deposit back. So be sure you really want the place before making this kind of deposit. New York law is unclear as to what portion of a holding deposit the landlord can keep if you decide not to rent or don't come up with the remaining rent and deposit money, or if your credit check doesn't satisfy the landlord. For this reason, whatever you and your landlord agree on (such as your right to get half the holding deposit back if you decide not to take the place within a certain number of days) be sure to write your agreement down.

Your agreement should cover:

- the amount of the deposit
- the dates the landlord will hold the unit, and
- the conditions for returning the deposit or applying it to rent or your security deposit.

Also, be sure you and the landlord understand what will happen to the deposit when you take the place. Usually it will be applied to the first month's rent. To make this clear, have the landlord give you a receipt for the deposit and be sure the receipt states what is to happen to the deposit when you come back with the rent.

Rental Application

Separate application required from each applicant age 18 or older.

THIS SECTION TO BE COMPLETED BY LANDLORD

Address of Property to Be Rented: 278 Henry St., Brooklyn, NY Apt. 2-A

Rental Term: ☐ month-to-month ☒ lease from Feb. 1, 200X to Jan. 31, 200X

Amounts Due Prior to Occupancy

First month's rent \$ 2,500

Security deposit \$ 2,500

Credit check fee \$ 50

Other (specify): \$ _____

TOTAL \$ 5,050

Applicant

Full Name—include all names you use(d): Gustavo Rios

Home Phone: (718) 555-1212 Work Phone: (212) 555-1212

Social Security Number: 10-1000-1111 Driver's License Number/State: NY #5555-2222-7200-55

Vehicle Make: Volvo Model: 700 Color: Black Year: 2001

License Plate Number/State: NY XMG-707

Additional Occupants

List everyone, including children, who will live with you:

Full Name	Relationship to Applicant
<u>Ilsa Rios</u>	<u>Wife</u>
<u>Francisco Rios</u>	<u>Son</u>
_____	_____
_____	_____

Rental History

Current Address: 60 Cranberry St., Brooklyn, NY 11201

Dates Lived at Address: 2/1/00-present Reason for Leaving: Looking for bigger apt.

Landlord/Manager: Paul S. Fogel Landlord/Manager's Phone: (718) 555-2222

Previous Address: 235 Maple Ave., Marlton, NJ 08053

Dates Lived at Address: 10/30/98-1/31/00 Reason for Leaving: Relocated to NYC

Landlord/Manager: Arrowhead Realty Co. Landlord/Manager's Phone: (609) 555-6222

Previous Address: 5 Springfield Terr., Haddonfield, NJ 08050

Dates Lived at Address: 8/1/96-9/30/98 Reason for Leaving: Too small

Landlord/Manager: Rev. Jack McBride Landlord/Manager's Phone: (609) 555-1212

Employment History

Name and Address of Current Employer: Silicon Alley Software, Inc.

121 W. 18th St., NY, NY 10010 Phone: (212) 555-1212 Ext. 121

Name of Supervisor: Chip Carmichael Supervisor's Phone: (212) 555-1212 X121

Dates Employed at This Job: 2/1/00-present Position or Title: Web Page Designer

Name and Address of Previous Employer: Delaware Valley Software, Inc.

7 Industrial Way, Mt. Laurel, NJ 08054 Phone: (609) 555-1212

Name of Supervisor: Freda Grey Supervisor's Phone: (609) 555-1212

Dates Employed at This Job: 2/1/97-12/31/99 Position or Title: Programmer

Income

1. Your gross monthly employment income (before deductions): \$ 8,000

2. Average monthly amounts of other income (specify sources): \$ 0

Wife's income reported on separate application

TOTAL: \$ 8,000/month

Credit and Financial Information

Bank/Financial Accounts	Account Number	Bank/Institution	Branch
Savings Account:	<u>78093832</u>	<u>Citibank</u>	<u>#46</u>
Checking Account:	<u>84976311</u>	<u>"</u>	<u>"</u>
Money Market or Similar Account:	<u>383-000343</u>	<u>Chase</u>	<u>100 William St., NYC</u>

Credit Accounts & Loans	Type of Account (Auto loan, Visa, etc.)	Account Number	Name of Creditor	Amount Owed	Monthly Payment
Major Credit Card:	<u>AMEX</u>	<u>1010-222-28931</u>		<u>\$1,000</u>	<u>\$1,000</u>
Major Credit Card:	<u>MasterCard</u>	<u>1213-777-68232</u>	<u>Citibank</u>	<u>\$4,300</u>	<u>\$120</u>
Loan (mortgage, car, student loan, etc.):	<u>Auto Loan</u>	<u>666-70-2390</u>	<u>Chase</u>	<u>\$7,500</u>	<u>\$319.02</u>
Other Major Obligation:					

Miscellaneous

Describe the number and type of pets you want to have in the rental property: 1 friendly Yellow
Labrador Retriever — 7 yrs. old

Describe water-filled furniture you want to have in the rental property:
None

Do you smoke? ☐ yes ☒ no

Have you ever: Filed for bankruptcy? ☐ yes ☒ no Been sued? ☒ yes ☐ no

Been evicted? ☐ yes ☒ no Been convicted of a crime? ☐ yes ☒ no

Explain any "yes" listed above: I was sued by a former employer for prematurely ending my
employment contract. Settled pursuant to a confidential settlement agreement.

References and Emergency Contact

Personal Reference: Dr. Win Foley Relationship: College friend

Address: 101 Windam Way
Chestnut Ridge, NY 10977 Phone: (914) 555-1212

Personal Reference: May Lopez Relationship: Former co-worker

Address: 101 Greene St., NY, NY 10012
 Phone: (212) 555-1212

Contact in Emergency: Pedro Sanchez Relationship: brother

Address: 60 Pineapple St., Brooklyn, NY 11201
 Phone: (718) 555-1212

I certify that all the information given above is true and correct and understand that my lease or rental agreement may be terminated if I have made any false or incomplete statement in this application. I authorize verification of the information provided in this application from my credit sources, credit bureaus, current and previous landlords and employers, and personal references.

1/8/0x Gustavo Rios
 Date Applicant

Notes (Landlord/Manager):

3. Illegal Rental Application Questions

Rental application questions that don't relate to the issue of whether you're likely to be a good, rent-paying tenant may not be legal. Fair housing laws limit the types of questions that landlords may ask rental applicants—whether on a written rental application or posed orally by the landlord or the landlord's agent during phone calls, walk-throughs, conversations and interviews in the rental office. In New York, questions and requests for documents which directly or indirectly reveal information about your age, creed, color, race, national origin, sex, disability, marital status or familial status are unlawful. In New York City, direct and indirect questions relating to your sexual orientation, lawful occupation or citizenship status or alienage are also off-limits. Chapter 11 discusses anti-discrimination laws in detail, including illegal application questions.

4. Signing the Rental Application

Before you sign a rental application, make sure you understand the fine print, especially in the area right above the signature line. Most rental applications include boilerplate language that states that by signing on the dotted line, you:

- certify that all the information you've provided is true and correct
- agree that your future lease or rental agreement may be terminated if you have made any false or incomplete statement, and
- authorize verification of all the information you provide in the application by your credit sources, current and previous landlords and employers and personal references.

D. Renter's Motto: Be Prepared

Searching for a New York apartment is not for the faint-hearted. Hot listings in New York City are often rented before they even make it to the classified section of the newspaper. While good luck can put you at the right place at the right time, it's preparation that will put you ahead of the competition.

If you're serious about finding a rental and only have a short period of time to land one, put together a file with the following documents. Make sure your roommates do the same. Professional landlords often

request these materials. While you may not need to produce all of them, you'll be ahead of the game (and the pack of other applicants) if you have these at the ready. At the very least, you'll need this information to complete the rental application.

- **Letter verifying employment and income.** Your application will move faster if you provide a letter written on company letterhead and signed by a supervisor, verifying your current or future employment, your position and annual salary. The letter should also list any other forms of anticipated income, such as a guaranteed bonus or housing stipend. Conscientious landlords will usually want to speak with your current employer to verify the contents of the letter and to get a better sense of your character—for example, to see if you're a responsible person.
- **Proof of other income.** Ask your lawyer or accountant to write a letter attesting to other significant sources of income, if any, such as investment dividends, alimony, royalties, residuals or proceeds from a trust fund or grant.
- **Recent pay check stubs.** Some landlords like to look at pay stubs, since they show not just your weekly gross and net salary, but also the amount of money you've earned during the year.
- **Recent tax returns.** If you are self-employed, you'll need to supply copies of your tax returns for the last year or two to verify your income. If you are renting an apartment in a co-op or condo, expect the third degree (as explained below) regardless of your employment status, including a request for a copy of your tax returns.
- **Recent bank statement.** Bring along a copy of a recent bank statement if it will show that you have enough cash on hand to pay the security deposit and first month's rent. It should also show that all of your recent checks were honored and didn't bounce.
- **List of creditors.** Many rental applications require you to list all of your creditors—that is, people and companies to whom you owe a debt, such as a department store, credit card company, bank or financial institution. You'll speed things up by putting together a list of all of your creditors, their addresses, your account numbers and outstanding balances.

- **Landlord reference letter.** If you're on good terms with your current and former landlords or managers, ask for a reference letter. To secure cooperation from an overworked landlord, consider offering to prepare the letter for the landlord's signature. Ideally, the letter should state that you would make a good tenant and that you pay rent on time and take good care of the rental property. Your prospective landlord may want to call your current or former landlords or managers, so make sure you alert them to this fact. Ideally, only give out the names of people who have positive things to say about you, although this won't always be possible. For example, if you had a horrible manager, he may be the very reason you're moving out.
- **Character reference letters.** Some landlords also want character references from people who are not related to you and who know you well. We show a model for the type of letter that will help you beat the competition below.



Model Character Reference

February, 200X

To Whom It May Concern:

I am writing to recommend Hannah Silver for the rental unit you have available. I have known Hannah for ten years and I cannot recommend her too highly. You won't find a better tenant.

I know Hannah as both a close personal friend and a colleague. We first met in 1985 when I started work as a technical writer at Argonworks in Princeton. Hannah has been the marketing director at Argonworks since 1983.

Hannah is extremely reliable and responsible. She's not the type of person who will pay her rent late (or come up with excuses why she needs a few extra days), bother you about small things, annoy other tenants with loud music or generally cause you problems. I have been to her house many times, and she is a meticulous housekeeper and very organized. She will take excellent care of your rental property.

Hannah is trustworthy, and she keeps her commitments. She has always worked 100% plus on marketing Argonworks products, consistently meets her deadlines and gives her best. She is a wonderful person to work with, a talented businesswoman and a cooperative team player. I am confident that Hannah will be one of your best tenants.

All in all, Hannah is a fantastic person who will be greatly missed when she moves to New York City. My husband and I are both from New York City, so we know how much she'll love living there.

I will be happy to provide further information about Hannah. If you have any questions, please feel free to call me at work (609-555-1232) or home (609-555-4578)

Sincerely,

Joan Stanley

Joan Stanley
785 Spruce St.
Princeton, NJ 08540

Expect More Arduous Application Process in Condos and Co-op Buildings

Here are some guidelines on what to expect if you're renting a unit in a condominium or cooperative property where the screening process is apt to be extremely thorough.

Co-ops. Many apartment buildings in and around New York City have been converted from rentals to cooperative ownership. Owners of individual apartments may rent out their units, subject to the approval of the building's board of directors (a group of apartment owners who volunteer to manage the co-op). So after making the first hurdle (approval by the co-op owner), you still need the co-op board's okay. Boards tend to be very selective about who may live in the co-op and routinely request a laundry list of financial documents, employment verifications and references from prospective renters. Since co-ops try to discourage rentals, they charge a hefty application fee (at least \$100) and usually require you to be personally interviewed by a board member. To make matters worse, most boards meet only once a month, meaning you may have to wait a month or more after submitting your application to find out whether you have been approved. If you are approved, expect to pay a "move-in fee" of around \$100 to cover the board's expected expenses related to your move.

Condos. Owners of condominium units may also rent out their apartments, subject to the approval of the building's board of managers. Condo boards tend to be far less exacting than co-op boards. At a minimum, expect to supply a letter verifying current employment and personal and landlord references. Application fees tend to be high (around \$100) and personal interviews by a board member are sometimes required (it depends on the building). Processing time usually runs from two to four weeks. If you're approved, expect to be charged a "move-in fee" to cover the board's expected expenses related to your move.

E. How Your Income and Credit Affect Your Rental Application

Having a good job and a credit card in your wallet may not be enough to qualify you financially for a

specific rental. Here's how landlords evaluate the income and credit information they get from your application and credit report.

1. How Much Money Must You Earn to Qualify?

The current rule of thumb, according to many of the apartment brokers and landlords we spoke with, is that a qualified applicant's gross annual income must equal or exceed 40 to 50 times one month's rent. Gross income is your full pay before any deductions are taken for taxes.

EXAMPLE: Courtney wants to apply for a one-bedroom apartment in Astoria that rents for \$1,400 per month. Depending on the landlord's screening policy, to qualify, Courtney must prove that her annual gross income is at least \$56,000 (40 times \$1,400) to \$70,000 (50 times \$1,400).

In addition to meeting the income threshold, you'll also need to have on hand enough cash to cover the application fee, the security deposit and your first month's rent. Hot rentals often go to the first qualified applicant to come up with the necessary funds to rent the unit. This means that as of the time you fill out a rental application, you should have enough money on hand to lease the apartment and pay any earned brokerage fee.

While some landlords accept personal checks drawn on New York banks, many others will require your rent and security deposit payments to be in the form of a certified or bank check, payable as soon as the day after you've signed the rental application.

2. What Your Credit Report Reveals About You

In addition to looking at your income, many landlords will find it essential to check your credit history with at least one credit reporting agency to see how responsible you are at managing money and whether you will be a reliable tenant who pays rent on time. This credit check can be the most important part of your application.

Your written consent is not necessary, as long as the landlord has a legitimate, business-related reason to check your credit report. Many landlords regularly ask for permission to check a credit report, just to

be safe and because tenants often think a written consent is necessary.

To run a credit check, all the landlord needs is your name, address and Social Security number. Armed with this information, the landlord can learn your credit history over the past seven years, including whether you have been:

- late or delinquent in paying rent or bills, including student or car loans
- evicted
- hit with a money judgment (including child support judgments) or tax lien, or
- involved in another type of lawsuit, such as a personal injury claim.

A credit report will also note whether you have filed for bankruptcy within the past ten years.

3. Check Your Credit Report Before a Landlord Does

Because credit checks are so important, you should check yours before you start your housing search. Your roommates (if any) should do the same. This will give you the opportunity to correct or clear up any mistakes, such as out-of-date or just plain wrong information. It's all too common for credit bureaus to confuse names, addresses, Social Security numbers or employers. Especially if you have a common name, (say Robert Cohen), chances are you'll find information in your credit file on other Robert Cohens, or even Roberta Cohen or Robert Cohan or Robert Coen. Obviously, you don't want this incorrect information given to prospective landlords—especially if the person you're being confused with is in worse financial shape than you are.

Below are phone numbers and website addresses for the three main credit reporting services. Contact any of them for a copy of your credit report. You can find more tenant-screening companies in the Yellow Pages or online under "Credit Reporting Agencies."

Equifax. 800-685-1111. www.equifax.com.

Trans Union. 800-888-4213. www.tuc.com.

Experian. 800-493-1058. www.experian.com.

You are entitled to a free copy of your report if you were denied credit, including a place to live, because of information in your credit report. You

may also qualify for a free copy of your credit report if you:

- receive public assistance
- are unemployed and will be applying for a job in the next 60 days, or
- believe your file contains errors due to fraud.

Otherwise, the charge is between \$8.50 and \$12.50, depending on the company.

If your credit report reveals that you were sued, chances are it won't include the result of the litigation. If the lawsuit was settled or was won by you, you'll need to bring this to the landlord's attention during the application process. Remember, simply getting sued doesn't mean you did anything wrong. Similarly, if the lawsuit had nothing to do with paying debts on time or being a responsible tenant—a custody fight, for example, or a personal injury claim—you might point that out, as well.

If you have no credit history—perhaps because you are a student or recent graduate—the landlord may require a guarantor to co-sign the lease before agreeing to rent to you. Chapter 2, Section D, discusses guarantors.

If your credit is poor or fair, you might be able to persuade the landlord to rent to you anyway by:

- highlighting your good references from previous landlords and employer
- bringing someone more creditworthy to co-sign the lease
- offering to pay a bigger security deposit, or
- explaining what steps you've taken to improve credit—for example, enrolling in a debt-counseling group.



Clean up your credit file. You have the right to insist that the credit bureau verify anything that's wrong, inaccurate or out-of-date. Information that can't be verified must be removed. For advice on obtaining your credit file, getting out of debt and rebuilding your credit, see [Credit Repair](#), by Robin Leonard (Nolo).

4. How Far Can Credit Reporting Agencies Go?

Landlords may go beyond a routine credit report and ask a credit bureau to pull together detailed information about your character, general reputation, personal characteristics or mode of living. If your landlord orders a background check on you, it will be considered an "investigative consumer report" under federal and state fair credit reporting laws. (15

U.S.C. §§ 1681 and following; N.Y. Gen. Bus. L. § 380-c.) The landlord must inform you, within three days, that a report has been made that concerns your character, reputation and personal characteristics. You must be informed that more information about the nature and scope of the report will be provided upon your written request, and if requested, must be furnished to you by the landlord within five days.

F. The Screening Process

For landlords, screening tenants is a delicate process that involves balancing federal, state and local fair housing laws, which limit what a landlord may do and say in the tenant selection process, with legitimate business reasons for rejecting tenant applicants. Here are five important points to bear in mind:

1. **Landlords are legally free to choose among prospective tenants as long as their decisions are based on legitimate business criteria.** Rental applicants with bad credit histories, insufficient income to pay the rent or risky rental histories, such as damaging property or consistently paying rent late, are a bad business risk and may be rejected.
2. **Fair housing laws specify clearly illegal reasons for landlords to refuse to rent to you.** Federal law prohibits discrimination on the basis of race, religion, national origin, sex, familial status and disability (including recovering alcoholics and people with a past drug addiction). New York State law adds marital status and age to the list of protected categories. And New York City law adds three more categories to the list: sexual orientation, lawful occupation and citizenship status. We review the details of these laws in Chapter 11.
3. **Every member of the landlord's team who handles your rental application must follow fair housing laws.** This includes owners, landlords, managers, building superintendents and real estate agents, and all of their employees.
4. **Landlords are legally free to choose among prospective tenants as long as their decisions are based on valid and objective business criteria,** such as:
 - a good credit history
 - sufficient income to pay the rent

- ability to meet non-discriminatory terms of the tenancy, such as no pets (see “A Disabled Tenant’s Right to Keep a Service Pet,” below)
- no prior bankruptcies, money judgments or eviction warrants
- no criminal record, with the exception of convictions for past drug use (see “How Past Arrests and Convictions May Affect Your Application,” below)
- two positive references from previous landlords, and
- a signed waiver giving your permission to current and past employers to talk to your prospective landlord.



Landlords can't limit your right to share your unit with roommates and immediate family members, unless the total number of people living in the rental unit violates local ordinances on overcrowding. Chapter 7 explains your apartment sharing rights.

5. **Landlords must use the same criteria to evaluate every rental applicant.** Landlords must treat all applicants more or less equally—for example, a landlord who arbitrarily sets tougher standards for renting to a member of a racial minority or other protected group is violating federal laws.

A Disabled Tenant's Right to Keep a Service Pet

Landlords may legally refuse to rent to people with pets and may restrict the types or size of pets accepted. The landlord may also, strictly speaking, let some tenants keep a pet and say no to others—because pet owners, unlike members of a religion or race, are not as a group protected by housing discrimination laws.

However, landlords may not prohibit a “service animal” who assists a sight-impaired, deaf or physically or mentally disabled person. (42 U.S.C. § 3604(f)(3)(B); Exec. L. § 296(18)(2); NYC Admin. Code § 8-102(18).) Disabled tenants may be asked by the landlord to submit proof (in the form of a doctor’s note, for instance) that the service animal is necessary to enable that person to live safely and comfortably in the apartment or home. See Chapter 11, Section A4, for more on the subject.

How Past Arrests and Convictions May Affect Your Application

Understandably, some landlords now check applicants' criminal history as part of the tenant screening process. Two of the big three credit agencies, TransUnion and Equifax, will do criminal history searches. New York law prohibits credit reporting agencies from disclosing an applicant's arrest record, unless the arrest resulted in a criminal conviction or in criminal charges that are still pending. (GBL § 380-j (a)(1).)

If you've been convicted for criminal offenses, a landlord may, with one exception, be entitled to reject you on that basis. The exception involves convictions for past drug use: As explained in Chapter 11, Section A4, past drug addiction is considered a disability, and a landlord may not refuse to rent to someone on that basis—even if the addiction resulted in a conviction. People with convictions for the sale or manufacture of drugs, or current drug users, however, are not protected and may be rejected.

New York criminal proceedings that get dismissed or result in an acquittal are "sealed" and aren't available to the public. A landlord may not obtain sealed criminal records. (CPL § 160.50.) Conviction records aren't sealed and are available to the public. A few other states, however, permit criminal conviction records to be sealed if certain requirements are met. If you have an out-of-state criminal record, you may

want to see if you qualify for having those records sealed. For more information, contact the justice department for the state in which the criminal proceeding was adjudicated.

A landlord may also use "Megan's Law" to check whether an applicant is listed on New York's database of registered sex offenders. Named after a young girl who was killed by a convicted child molester who lived in her New Jersey neighborhood, this 1996 federal crime prevention law charged the FBI with keeping a nationwide database of persons convicted of sexual offenses against minors and violent offenses against anyone. (42 U.S.C. §§ 14073 and following.) New York's version of Megan's Law is officially known as the New York State Sex Offender Registration Act (Correction L. § 168). To determine if a named individual is listed in the state sex offender registry, landlords and other members of the public can call 900-288-3838 weekdays, between 8:00 a.m. and 5:00 p.m. (There's a \$5 fee that appears on the caller's phone bill.) For more information, or to correct information about you that might appear on the database, call the State Division of Criminal Justice Services at 518-457-7301, write them at 4 Tower Place, Albany, NY 12203-3764, or visit the DCJS website at www.criminaljustice.state.ny.us/nsor/index.htm.

G. The Verdict

Once you've submitted all of the required information to the landlord, you must wait for the verdict—a call letting you know whether your application has been approved or rejected.

1. If You Get the Place

If you've been offered a place, congratulations! But before you call the mover, you've got a few more things to do. The next step is to clarify the terms of the tenancy (something you may have done already), including move-in dates, security deposit and any repairs or maintenance, such as painting, that needs to be done. Before you sign a lease or rental agreement, read Chapter 2 and make sure you understand

all the terms of your agreement. Also, be sure to read Chapter 6 on the importance of inspecting the rental unit before you sign a lease or rental agreement or move in.

Most important, you need to take your time (as much as possible). One of the worst (and most costly) mistakes you can make is to sign a lease or put down a hefty deposit after a long, frustrating period of apartment-hunting—only to realize later that the place is completely unsuitable.

2. Dealing With Rejection

If your rental application is rejected, be sure to ask for reasons. In some cases, you may have a right to see the information upon which the landlord based the rejection and, if possible, correct or refute it.



If you have some indication that the rejection was based on illegal discrimination, promptly file a complaint with a federal, state or local agency.

See Chapter 11 for more information on fair housing rules and how to file a discrimination complaint.

If the landlord does not rent to you (or charges a higher rent or security deposit) because of an insufficient credit report or negative information in the report, you must be provided with the name and address of the agency that reported the negative information or furnished the insufficient report. To obtain a free copy of your credit file from the agency that reported

the negative information, request it within 60 days of being told that your rejection was based on the credit report. (15 U.S.C. §§ 1681 and following; N.Y. GBL § 380-i (a).) You may dispute the report's accuracy and add your own "consumer statement" to their report.

This requirement does not apply if the landlord rejects you based on a review of your application, after conversations with current or prior landlords or employers or after an interview. For example, if your landlord rejects you because you want to keep a dog, contrary to the property's no-pets policy, you are not entitled to the disclosure procedures explained above. ■



Leases and Rental Agreements

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7he rental agreement or lease you and your landlord sign forms the contractual basis of your relationship. Taken together with the laws of New York State, federal laws and, in some areas, local laws, it sets out almost all the legal rules you and your landlord must follow. Your rental agreement or lease is also an immensely practical document, full of crucial details, such as how long you can occupy your apartment and how much rent you must pay.

Given the importance of these issues, there's no question that you need to fully understand your legal agreement with your landlord. This chapter discusses key differences between leases and rental agreements, explains two dozen provisions typically included in leases and rental agreements and points out unfair clauses that are sometimes included but never enforceable. It also discusses renewal lease rights of rent-stabilized tenants. Other topics in this chapter include required disclosures and riders on lead hazards, anti-fall window guards and rent stabilization laws.



Model Letters and Sample Forms in Appendix B

- Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
- New York City Department of Health Window Guard Notice (WF013)
- DHCR Rent Stabilization Lease Rider for Apartment House Tenants Residing in New York City (RA-LR1)
- NYC Lease/Commencement Lead Hazard Notice—Inquiry Regarding Child
- NYC Annual Lead-Hazard Notice—Inquiry Regarding Child
- A Guide to New York City Local Law 38 of 1999
- DHCR Renewal Lease Form (RTP-8)

A. How Leases and Rental Agreements Compare

While both leases and rental agreements cover many of the same important issues, such as the amount of rent and security deposit you must pay, the fundamental difference between the two is the length of the tenancy. A rental agreement lasts only from one

month to the next, while a lease almost always covers a longer, fixed period. To decide which is better for you, read what follows and carefully evaluate your own situation.

1. Month-to-Month Rental Agreement



Skip ahead to Section 2 if the unit you wish to rent is covered by rent stabilization. Both New

York City and New York State (Emergency Tenant Protection Act or ETPA) rent stabilization laws require that such apartments be covered by a one- or two-year lease, at the tenant's option.

A written rental agreement provides for a tenancy for a short period of time, usually one month. The law refers to these agreements as periodic or month-to-month tenancies, although it is often legally possible to base them on other time periods—for example, if the rent were due every two weeks.

A month-to-month tenancy is automatically renewed each month unless your landlord gives you written notice of termination. Thirty days' notice is required in New York City. One month is sufficient everywhere else. That means that the landlord can change an important term of the agreement, like the rent, on as little as 30 days' notice, as well.

Month-to-month rental agreements give tenants more flexibility than leases. If your housing plans change, it's easy to get out of the rental agreement without any financial penalties. New York City tenants aren't required to give the landlord any notice of their intent to move out unless their rental agreement says they must. Tenants outside New York City must give the landlord one month's notice. Chapter 14 details the rules on how to terminate a month-to-month tenancy. Not surprisingly, many tenants prefer to rent from month-to-month if they expect to move to a more permanent home in the near future. Month-to-month rental agreements are also good for folks who have a permanent home somewhere else but need to rent a place while on a temporary work assignment or attending college for a semester or two.

On the flip side, a month-to-month tenancy makes you vulnerable to eviction on as little as 30 days' notice from your landlord (one month's notice outside New York City). For most tenants, this aspect of a rental agreement makes life far too uncertain. They prefer the security that comes from a fixed-term lease. And if you're one of those tenants who like to

spruce up their surroundings, a month-to-month arrangement is definitely not for you. Just after your window treatments have gone up, your tenancy could be over.

2. Fixed-Term Lease

A lease is a contract that obligates both you and the landlord for a set period of time—usually a year. Leases may be shorter (six months) or longer (24 months)—this is up to you and the landlord. A long period—two, three or even five years—can be appropriate, for example, if you’re taking a two-year sabbatical or if you plan to make major repairs or remodel the rental property. Unfortunately, it’s usually the landlord—not the tenant—who gets the last word on the length of the lease term.

With a fixed-term lease, your landlord can’t raise the rent or change other terms of the tenancy until the lease runs out, unless the lease itself allows future changes or you agree to them later, in writing.

The best part of a lease is the housing security it offers. Your landlord may not arbitrarily end your lease before it is set to expire. Your tenancy may be terminated only if you fail to pay the rent or violate another significant term of the lease or the law, such as repeatedly making too much noise, damaging the rental unit or selling drugs from your apartment. Chapters 15 and 16 discuss the reasons a landlord may terminate a fixed-term lease. Of course, getting out of a fixed-term lease early can be problematic. While landlords will usually agree to end a rent-stabilized lease early (so they can collect a big “vacancy” rent hike on the apartment from the next tenant), there are financial risks for tenants who break a lease on a non-regulated rental unit. Chapter 17 explains circumstances when you may break a lease without further financial obligation for rent—for example, if the rental unit is uninhabitable and the landlord refuses to make necessary repairs. Chapter 18, Section E, discusses your liability for rent after you move out.

When a fixed-term lease ends, the ball’s in your landlord’s court. She can:

- decline to renew the lease—unless the lease contains a renewal option (which automatically renews the lease for a set period of time) or is covered by rent-stabilization (which provides tenants the option of renewing the lease for a one- or two-year term)

- sign a new lease with you for a set period, or
- do nothing—which means your lease will turn into a month-to-month tenancy if you continue to pay monthly rent.

Always Put Your Agreement in Writing

Oral leases or rental agreements are perfectly legal for month-to-month tenancies and for leases of a year or less. (GOL § 5-703(2).) If you have an oral lease for a term exceeding one year, it becomes an oral month-to-month agreement after the first year is up. While oral agreements are easy and informal, it is never wise to use one. As time passes, people’s memories (even yours) have a funny habit of becoming unreliable. You can almost count on your landlord claiming that you made, but didn’t keep, certain oral promises—for example, to handle repairs yourself or to pay more rent. Landlords may also forget key agreements, such as mentioning in conversation one day that you may keep a dog. And other issues, like how deposits may be used, probably aren’t covered at all. Oral leases are especially dangerous because they require that both parties accurately remember one important term—the length of the lease—over a considerable time. If something goes wrong with an oral rental agreement or lease, you and your landlord are all too likely to end up in court, arguing over who said what to whom, when and in what context.



If the apartment you wish to rent is rent-controlled or rent-stabilized, be sure to read Chapter 4, which covers the various forms of rent regulation in New York.

If you’ve found a rental unit that’s covered by rent stabilization, you’re entitled to a one- or two-year vacancy lease, which is the initial lease for a rent-stabilized tenant. You get to choose the term. The provisions of the vacancy lease must comply with applicable rent-stabilization laws and regulations, and may not change or limit any of the protections or entitlements granted to rent-stabilized tenants. When the vacancy lease expires, rent-stabilized tenants have a vested right to renew their leases for a one- or two-year term, at their option. Subsequent leases are called renewal leases. Section E, below, covers renewal leases. You can’t get a lease or rental agreement for a rent-controlled unit. The only way you can become entitled

to a rent-controlled apartment is to be a rent-controlled tenant's legal successor. Chapter 7, Section F, explains how rent-regulated apartments may be passed on to loved ones under succession laws.



Beware of fine print. New York State law requires all residential leases and rental agreements to be printed clearly and legibly in eight point or larger type. Leases and rental agreement printed in smaller than eight point type are not enforceable inasmuch as they may not be admitted as evidence in court. (CPLR § 4544.)

B. Typical Provisions in Leases and Rental Agreements

There's no standard form lease that all New York landlords must use. While many New York landlords use pre-printed form leases published by the Real Estate Board of New York and the Blumberg/Excelsior Publishing Company, others craft their own from scratch. That said, most leases and rental agreements cover the same basic promises and obligations.

Here are a few dozen of the most important clauses typically found in leases and rental agreements. While New York law requires residential leases and rental agreements to be written in "plain English" (GOL § 5-702), most agreements still include at least some legalese and lots of long-winded paragraphs. In this section, we'll strip pretentious phrases and verbose clauses down to their simple legal meanings.

Some tenants just sign whatever lease or rental agreement the landlord puts in front of them, without bothering to read it. Since residential tenants don't have the negotiating clout that commercial tenants do, they say, "What's the use?" While it's true that landlords call the shots in residential tenancies, it's still vital that you read and understand the contract before you sign it. (Whenever we use the term "contract," we are referring to both leases and rental agreements.) Your landlord will hold you to all of the tenant promises and obligations in the contract—whether or not you actually read them before signing. And, your landlord may be amenable to discuss and make minor changes to the contract that are important to you. We point out modifications tenants may wish to make in the sections that follow.

When reading through a lease or rental agreement, keep in mind that violating an important promise can lead to your eviction. For example, under most

leases and rental agreements, as explained in Chapter 16, the following tenant actions are considered violations that are serious enough to justify termination of the tenancy:

- using the rental unit for a business that violates local zoning laws or is inconsistent with the residential character of the building (Section 3, below).
- failing to post a security deposit (Section 6)
- illegally subletting or assigning (Section 8)
- seriously damaging the property (Section 10)
- making alterations or improvements without permission (Section 10)
- engaging in illegal or objectionable conduct (Section 12)
- keeping a pet without permission (Section 14)
- failing to give the landlord a duplicate key to a lock you installed (Section 15), and
- failing to provide access to the landlord for inspections or repairs or to show the unit (Section 15).



Nolo has developed standard lease and rental agreement forms that are clearly written and fair to both landlords and tenants. If your landlord doesn't give you a written lease or rental agreement, or hands you one that is clearly unfair, you might suggest using the ones (on paper and disk) that are available in *The New York Landlord's Law Book*, by Mary Ann Hallenborg (Nolo).

1. Identification of Landlord and Tenant

Every lease or rental agreement must identify the tenant and the landlord or the property owner—often called the "parties" to the agreement. The tenant may be referred to as the "lessee" and the landlord as the "lessor."

Any competent adult—at least 18 years of age—may be a party to a lease or rental agreement. (RPL § 11.) While landlords are legally permitted to enter into contracts with minors, they are usually reluctant to do so. That's because a minor may "disaffirm," or cancel, a lease or rental agreement within a reasonable time after turning 18. (GOL § 3-101.)

If there is more than one tenant, the lease or rental agreement will typically provide that all tenants are "jointly and severally" liable for paying the rent and abiding by the terms of the contract. This bit of legalese simply means that each tenant is legally

responsible for the whole rent and complying with the agreement. The landlord can legally seek full compensation from any one of you should the others skip out or be unable to pay, or evict all of you even if just one has broken the terms of the lease—for example, by seriously damaging the property. Chapter 7, Section A, discusses co-tenancies.

2. Description of the Rental Unit

Your lease or rental agreement will contain a description of the property being rented (often called “the premises”). This should include a full address, including your apartment number or other designation, such as lower floor. And it should provide detail on furnishings, storage areas and extras such as a terrace or parking space. If parking is provided, the contract should specify the number of the space provided and its exact location.

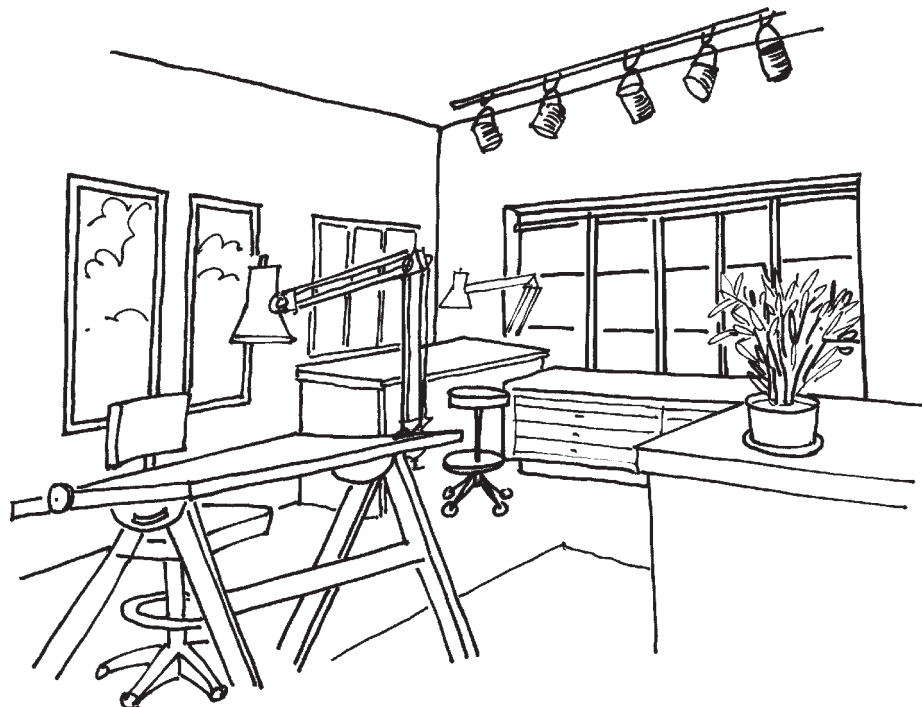
In some circumstances, you may want to elaborate on exactly what the premises do, or do not, include, especially in rural areas where there might be more than one building located on the same property. If, for instance, there’s a gardening shed or barn on the grounds, the lease or rental agreement should clearly state whether such outbuildings are part of the rented premises.

3. Restrictions on Business Use

Virtually all leases and rental agreements specify that the premises are to be used “for residential purposes only,” or “for living purposes only.” This to prevent you from using the property to conduct a business that might violate zoning laws, raise the landlord’s insurance premiums or adversely affect the residential character of the property.

If you’re one of the million New Yorkers who run a business from your home, a residential-use-only clause is a potential problem. If you work alone or your job primarily consists of making phone calls or using your computer, you’ve probably got nothing to worry about. But if you have employees or expect clients or deliveries on a regular basis, you’ll want to discuss your proposed use of the premises with the landlord. Obviously, you don’t want to move your phones, computers and business to your new home address only to receive a legal notice from your landlord a few months later that threatens termination on this ground (business use of the premises). Chapter 16, Section C, discusses when landlords may terminate a tenancy based on a home-based business.

Your landlord’s decision to permit some business use of the premises will turn on whether your proposed use will violate local zoning law restrictions, the amount of traffic your business generates, whether



you intend to install outside signs, the number of employees you have and the percentage of floor space in the rental unit you plan to devote to the business.



New York City zoning laws specifically prohibit ten home occupations. They are: advertising or public relations agencies, barber shops, beauty parlors, commercial stables or kennels, depilatory, electrolysis or similar offices, interior decorators' offices or workshops, ophthalmic dispensing, pharmacy, real estate or insurance offices and veterinary medicine. (NYC Zoning Laws, Art. I, § 12-10.)

Another consideration is whether your business use of the premises will trigger a requirement that the entire property meet the accessibility requirements of the federal Americans with Disabilities Act. (For more information on the ADA, contact the U.S. Department of Justice at the offices listed in Appendix A.) Your landlord will be especially concerned if your proposed business will inconvenience neighboring tenants or compromise the property's security.

A landlord who lets you run a business from your rental unit may require you to purchase certain types of liability insurance. That way, the landlord won't wind up paying if someone gets hurt on the rental property—for example, a business client who slips and falls in the lobby. For more information on renters' insurance, see Section 11, below.

4. Limits on Occupants

Real Property Law (RPL) § 235-f, (the "Roommate Law"), prohibits unlawful restrictions on the occupancy of residential rental units. Originally enacted in 1983 to protect "live-in lovers" from eviction, the Roommate Law bars landlords from limiting occupancy of a rental unit to just the tenant named on the lease or rental agreement, or to the "tenant and the tenant's immediate family," as many leases purport to do. Clauses in rental agreements or leases that attempt to waive or modify your Roommate Law rights are null and void. No matter what the contract says, the Roommate Law permits you to share your rental unit with immediate family members and with unrelated, non-tenant occupants as well, provided that you, or your spouse, occupy the unit as a primary residence. Chapter 7 contains a full discussion of the Roommate Law, as well as overcrowding statutes.

Check the Definition of "Immediate Family"

The Roommate Law permits tenants to share their units with "immediate family," but the law fails to identify which family members are included in the definition of immediate family. Sometimes, the lease or rental agreement will list specific relatives who may be considered "immediate family" and therefore permitted to occupy the rental unit with you under the Roommate Law. An overly restrictive list that, say, narrowly defines "immediate family" to include only your spouse and minor children would run afoul of the Roommate Law's intent and policy and could be deemed unenforceable by a court if your landlord tried to evict you for violating it.

If you contemplate sharing the unit with a relative who is not on the list, ask the landlord to add that relative to the contract. For instance, say that you intend to invite your Aunt Winnie to move in with you. But the lease defines your immediate family as your spouse, parents, children and grandchildren. You could request that the definition be modified to include "aunts." If the landlord refuses, you might still be able to have Aunt Winnie move in as a roommate, instead of as an immediate family member. Chapter 7 discusses when you may share your unit with unrelated roommates.

If your lease or rental agreement does not define the term "immediate family member," New York's rent regulations provide guidance. For rent-stabilized apartments, the regulations define the terms "tenant's family member" and "immediate family," as including the following set of relatives: husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law. If you are renting a rent-stabilized apartment, and the definition of immediate family in the lease you are offered conflicts with the one found in the rent regulations, a court would probably use the more generous of the two definitions to resolve the issue of whether a given family member could move in under the Roommate Law.

If your apartment is not rent-regulated, and your lease or rental agreement does not define the term "immediate family," talk to your landlord about including the definition used for rent-stabilized apartments, above, if that suits your needs.

5. Rent, Late Fees and Grace Periods

Your lease or rental agreement will specify the amount of regular monthly rent, when it's due (typically, the first of the month) and where it's to be paid (via mail to the landlord's bank, lock box, office or home are common). The contract may also specify how rent may be paid, such as by personal check or money order.

For unregulated units, the landlord can legally charge as much rent as you will agree to pay. There are limits, though, on the amount of rent that can be charged for rent-stabilized apartments. Chapter 4 details how rent increases may be calculated for rent-stabilized units.

When reading the rent clause, be alert to any “additional rent” that might be payable under the lease. Additional rent is an agreed-upon fixed amount for extra services such as a parking or garage space, utility costs or fees. Referring to a fee or charge as “additional rent” permits your landlord to begin non-payment eviction proceedings against you if these charges go unpaid—just as when monthly rent goes unpaid—instead of having to go to small claims court to collect them. Any charges or fees for late rent payments, returned checks or other bank charges, for instance, must be spelled out in the lease or rental agreement. To be enforceable, such fees must bear a reasonable relationship to the actual loss the landlord would expect to suffer as a result of your tardy rent payment or returned check. For more information on what's reasonable, read Chapter 3, Sections E and F.

A grace period is a promise by the landlord that he won't demand the rent (the first step to an eviction proceeding for rent nonpayment) until you are a certain number of days late with the rent. Don't confuse this with a “late fee after ten days” clause. Your landlord is legally entitled to take steps to evict you for nonpayment of rent as soon as the day after rent is due—regardless of the late fee clause. Chapter 15 discusses rent demands and nonpayment eviction proceedings.

6. Security Deposit

New York law permits landlords to collect a monetary security deposit when a tenant moves in and hold it until the tenant leaves. The purpose of the deposit is to insure the landlord against the risk that you'll move out owing rent or leaving the rental unit in poor

repair. The use and return of security deposits is a frequent source of disputes between landlords and tenants. The best way to avoid confusion and legal hassles is to make sure this clause is clear on the following points:

- the dollar amount of the deposit
- the name of the bank or financial institution where it will be deposited
- when the deposit will be returned, and
- permitted deductions from your security deposit.

For non-regulated units, a landlord may collect as large a deposit as you are willing to post. For rent-stabilized units, the maximum deposit is one month's rent. Your landlord must put all tenant security deposits in a segregated bank account. It can't be commingled, or mixed, with the landlord's personal funds or with the property's operating funds. If the property you are moving into contains more than six units, or if your unit is rent-stabilized, the security deposit account *must* earn interest. (GOL § 7-103.) Chapter 5 covers these rules in detail and discusses the ways in which interest may be paid to you.

Landlords have a “reasonable” time after you move out to return your deposit, adjusted for any deductions. Many pre-printed New York lease forms provide that the landlord has up to 60 days to return the security deposit or to notify you as to how the deposit was applied—for example, to unpaid rent or damage repair costs. If possible, try to negotiate a shorter deadline, say 30 days or so. Chapter 18 discusses permitted security deposit deductions and procedures for returning security deposits.

7. Utilities

Your lease or rental agreement should contain a clause that specifies who will pay for the water, gas and electricity provided to your rental unit. Apartment building landlords typically pay for water and gas service (if there are gas appliances like stoves, laundry equipment or hot water heaters). Tenants usually pay for their own electricity, phone and telecommunications services. When renting houses, tenants usually pay for all of the utilities themselves.



Shared meters are illegal. So-called “shared meters,” in which a tenant's gas, electric or steam meter services the tenant's rental unit as well as other areas outside the tenant's unit, are unlawful. (Public Service Law § 52(2)(a).) New York law requires

landlords to eliminate shared meters by either sub-metering (so that the tenant's meter only measures service used within the tenant's unit) or by transferring the shared meter to the landlord's account.

Chapter 6 discusses how to set up accounts with public utilities and telecommunication companies, and what to do if you run into problems.

8. Sublets and Assignments

Chances are your lease or rental agreement will contain a clause forbidding you from subletting the rental unit or assigning the contract without the prior written consent of the landlord. Here's what such clauses mean to you.

a. Sublets

A sublet is a temporary arrangement where you rent all or part of the rental unit to someone else, who's known as the subtenant. Your lease or rental agreement may require you to get written permission from the landlord before moving in a proposed subtenant. If the property in which the rental unit is located contains fewer than four units, your landlord is legally permitted to reject a proposed subtenant for any reason, or no reason.

But if the property has four or more units, New York's "Sublet Law" applies and requires the landlord to have a valid, non-discriminatory reason for refusing to consent to a sublet. The landlord can't reject your properly made sublet request for no reason, or unreasonably withhold consent.

If the unit is covered by rent stabilization, you may not sublet for more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the expiration date of the proposed sublease. (9 NYCRR § 2505.7(c).) The term of the sublease may, however, extend beyond the term of your lease, and the landlord may not refuse to consent to a sublease on that basis.

Chapter 12 provides more details on sublets, describes how sublet requests must be made and includes a sample sublease agreement.

b. Assignments

An assignment is a legal term that means you transfer your entire tenancy to someone else. By prohibiting assignments without the landlord's prior written consent, the landlord has the option not to accept

the person you propose to take over your tenancy. If, however, the landlord refuses to consent to an assignment for no reason, or unreasonably withholds consent, New York law gives you the option to be released from the agreement or lease upon 30 days' written notice. (RPL § 226-b.)

Your sublet and assignment rights, as described above, may not be changed or taken away, no matter what your lease or rental agreement says.

However, if your lease or rental agreement doesn't specifically prohibit sublets or assignments, you can do so without your landlord's consent. Nevertheless, it's always wise to notify your landlord first, since most landlords will want to know who is living in the rental unit.

Chapter 17, Section E, discusses assignments.

9. Condition of the Rental Unit and Landlord's Responsibilities

Most leases and rental agreements contain a clause in which you agree that the premises are in habitable (livable) condition. Before you sign off on a clause like this, we strongly recommend that you inspect the rental unit and note any problems, using an Apartment Inspection Checklist like the one in Chapter 6. Doing so will help you identify problems that need fixing before you move in, and help you avoid losing your security deposit over something that was not your fault. It's best to insist that this Checklist be made part of your lease or rental agreement. You can add a clause like this:

"Tenant has examined the Premises and has found them to be in good condition and repair, except as noted in the Apartment Inspection Checklist, which is attached as a rider to this lease."

If the landlord won't do this, at least include the landlord's specific promises in the lease or rental agreement. If the landlord promises to fix the oven or install a new lock, for example, write this into the lease or rental agreement and set a deadline for work to be completed (ideally, before you move in).

Chapter 6 includes sample agreements regarding repairs.



Know your rights to live in a habitable rental unit. The warranty of habitability is a landlord promise, implied by law, that the premises are livable, usable and safe—and will stay that way throughout the rental term. (RPL § 235-b.) Chapter 9 discusses the details

of the landlord's repair and maintenance responsibilities and your options, such as withholding rent, if the landlord does not live up to the law. Under New York Law, any words a landlord includes in a lease or rental agreement saying a tenant gives up his right to habitable housing won't be enforced by a court. By law, the landlord has to come through with habitable housing, no matter what the contract says.

Landlord's Responsibility for Repairs Caused by Disasters

Many leases and rental agreements outline the landlord's responsibilities if the rental property is damaged or destroyed by a disaster such as a flood, fire or explosion. For example, the landlord might have the right to declare the lease terminated if the premises are totally destroyed, or have the option to simply suspend the lease and begin repairs quickly.

If your lease has no provision regarding destruction, a New York statute fills the gap. Real Property Law § 227 permits tenants whose units are damaged or destroyed by no fault of their own to terminate their lease or rental agreement and move out without any further obligation to pay rent. However, most contracts change this result by letting the landlord elect either to hold you to the agreement while the landlord restores the premises or terminate the agreement on written notice.

For more details on what to do if your rental unit is destroyed or damaged, see Chapter 9, Section N.

10. Tenant Repairs, Renovations and Alterations

Most leases and rental agreements state that you are responsible for keeping the premises sanitary and in good condition and that you must reimburse the landlord for the cost of repairing damage caused by your abuse or neglect. Some clauses go beyond a general statement and actually detail a tenant's responsibility for problems like broken windows and clogged drains. And a few landlords go so far as to delegate some of their own repair and maintenance responsibilities to tenants. This is most common, and most practical, for single-family houses or duplexes, because owners of these properties seldom have on-site managers or maintenance staff. We discuss tenant

repair and maintenance obligations in Chapter 9, Section F.



Some landlord duties are non-delegable.

No matter what your lease or rental agreement says, New York's warranty of habitability law obligates your landlord to furnish you with safe and livable housing. (RPL § 235-b.) And if your apartment is in a building with three or more units, state law requires the landlord to keep your rental unit (and the building's common areas) in good repair. (MDL § 78; MRL § 174.) A landlord can't pass these statutory obligations off to you.

Your lease or rental agreement will probably also tell you when you can't get out your toolbox. Typically, the contract states that a tenant may not make *any* alterations to the premises without the landlord's prior written consent, from decorating walls to installing appliances and security systems. If this type of clause is included in your lease, your landlord can end your tenancy if you make a substantial alteration without permission. (Chapter 6, Section F, discusses alterations and improvements. Chapter 16, Section B, discusses the types of alterations that may justify termination of the tenancy.)

In addition, your lease or rental agreement may specify that if you add any "fixtures"—a legal term that refers to personal property you attach to the structure, such as a bolted-on bookcase or wall sconce, that you must: 1) remove them when you leave, and 2) restore the walls, floors or ceilings to their original condition. If you leave behind a fixture when you move out, it becomes the landlord's property. The landlord may elect to keep the fixture, or remove it from the rental unit and deduct from your security deposit the cost of restoring the walls, ceilings or floors to their original condition.

In certain situations, tenants have a narrowly defined right to alter or repair the premises, regardless of what's in the lease or rental agreement. Examples include:

- **Alterations by a disabled person, such as lowering counter tops for a wheelchair-bound tenant.** Under the federal Fair Housing Acts (and New York's Human Rights Law), a disabled person may modify her living space to the extent necessary to make the space safe and comfortable. (42 U.S.C. §§ 3601-3619.) See Chapter 11, Section A4, for details.

- **Installation of telecommunications antennas.**

Federal law gives tenants limited rights to install wireless antennas and small satellite dishes. See Chapter 6, Section E, for details.

- **Use of the “repair and deduct” procedure.** Tenants have the right to repair minor defects or damage that make the premises uninhabitable or substantially interfere with the tenant’s safe use or enjoyment of the premises. The tenant must first notify the landlord of the problem and give her a reasonable amount of time to fix it. See Chapter 9, Section G, for more on this topic.

Who’s Responsible for Appliance Repair?

For non-regulated units, there aren’t any state laws that require landlords to provide major appliances such as refrigerators or stoves. So, if you see a refrigerator or a stove in a rental unit, you would naturally expect it comes with the deal, and that if an appliance breaks through no fault of your own, it’s the landlord’s job to fix it. Think again.

It’s perfectly legal (but very tacky) for a landlord to include a clause in the lease or rental agreement stating that the appliances are there for your use, but are not part of the rent. The clause goes on to say that if you use the appliances, you are responsible for their repair and maintenance. If the apartment is otherwise terrific and the appliances are in pretty good shape, you might decide to take the deal, but it probably makes sense not to rent from someone who pinches pennies this hard—unless you absolutely have to.

For rent-stabilized tenants, the rule is different. Your landlord must continue to furnish and maintain any services, including appliances, that were in place when the apartment first became subject to rent regulation (the “base date”). To find out what appliances were supplied by the landlord on the base date, ask the landlord for a copy of the initial DHCR rent registration statement for the unit. It lists all required appliances and services. While your lease may obligate the landlord to furnish additional appliances, such as a microwave, it may never provide for less. For more information on services that must be provided to rent-stabilized tenants, go to Chapter 9, Section M.

11. Renters’ Insurance

Your lease or rental agreement may contain a clause alerting you to the fact that your landlord’s insurance does not cover any damage or liability that may result from your own negligence. This means that your landlord’s policy won’t cover you if your carelessness causes:

- damage to the rental unit or other tenants’ property
- loss of or damage to your belongings, or
- injuries to yourself or others.

It is becoming increasingly popular, especially in high-end rentals, for leases to require tenants to obtain renters’ insurance that covers losses to your belongings as a result of fire or theft and also provides coverage if your negligence causes property damage or injury to other people. The contract may require periodic proof that the insurance policy is in place.



A landlord may request—but probably may not require—a rent-controlled or stabilized tenant to buy renters’ insurance. While there are no cases that address this specific situation, if your landlord forces you to buy insurance, you may wish to file a rent-overcharge complaint with DHCR. The DHCR could well find that the extra money you must shell out for insurance constitutes a willful overcharge. Chapter 4, Section H, explains how to file an overcharge complaint.

Even if your landlord does not require renter’s insurance, it’s a good idea to buy it if you can afford it. Renters’ insurance policy premiums typically cost between \$150 and \$250 a year, depending on where you live. This will give you \$25,000 in personal property insurance and \$100,000 of liability insurance (which covers property damage or injury to other people caused by your negligence). You can increase the policy limits and pay a higher premium. A basic policy will cover the following:

- loss of your personal property due to theft (such as a burglary)
- damage to someone else’s property caused by your negligence—for example, if you overflow your tub and damage the apartment below yours
- liability for injuries to others that occur in your rental unit—for example, if your guest slips and breaks her leg on your freshly washed kitchen floor

How to Choose Renters' Insurance

When considering renters' insurance, follow these steps:

Take a property inventory. In order to choose a policy limit, you'll need to know the value of the items that you'll insure. (The smallest amount of coverage is usually \$16,000.) You will be surprised at how fast the totals will mount up, given our ever-expanding inventory of modern necessities—computers, VCRs, bicycles, cameras, clothing, stereos, even pets. Also, taking an inventory will make it easier to make a claim, should you need to do so. Make a copy of your inventory and keep it in a safe place away from home. Consider using Nolo's *Personal RecordKeeper*, an interactive software program that will generate a full inventory of your assets.

Shop around. Find an agent or company representative you trust—possibly your automobile insurance agent, or one recommended by friends or relatives. Keep your inventory handy so that you can compare premiums.

Check what's covered. Ask about things not covered by the policy or where dollar limits are low. Cash is usually not covered and jewelry, computers and table silver coverage typically is limited, but you may be able to buy additional coverage (called a "floater" policy). Bicycles are usually covered (but not cars, vans, boats or trucks). If you run a home business, you may need to purchase additional coverage for office equipment.

Determine whether the policy is for replacement value. If you suffer a loss, your renters' policy can cover your belongings in one of two ways. It can reimburse you for the actual cash value (what your three-year-old computer would sell for today on the open market) or pay replacement value (what you would have to spend today to get a comparable

computer). Obviously, a replacement value policy is preferable but is likely to cost more.

Check the deductibles amount. The typical range of deductibles is \$250 to \$500 for property loss claims (the higher the deductible, the lower the premium). There are no deductibles for liability claims against the policy.



If you aren't worried about your property, get a high deductible.

If your landlord requires renters' insurance to cover any damage you cause to his property, but you really aren't worried about the theft or loss of your own goods (maybe they aren't worth much, or you live in an extremely safe area), you can save a bundle by getting the highest deductible the insurance company offers.

Read your policy. Don't assume that the fine print exactly mirrors what you and the insurance agent discussed. Unless you check the important points (and complain, if there are any discrepancies), you'll be stuck.



The New York State Insurance Department publishes a "New York Consumer Guide to Homeowners and Tenants Insurance."

The Guide describes the types of basic policies that companies offer, recommends how much coverage to purchase and explains what additional services are offered on top of the basic policies. Sample premiums for the major companies are also listed to help tenants compare prices when shopping for insurance. You can obtain the free Guide by calling the Insurance Department consumer information telephone hotline at 800-342-3736, or downloading it from its website (www.ins.state.ny.us/hmonguid.htm).

- damage to the contents of your rental unit, including appliances, fixtures, alterations and improvements, caused by fire, smoke damage, windstorms, hail, vandalism and other physical losses except those that are specifically excluded, like damage caused by floods, earthquakes and acts of war, and
- your extra expenses if you are required to move out of your apartment because it becomes uninhabitable due to fire, smoke damage, windstorms, hail or vandalism.

If you're willing to pay a bigger premium, you can purchase a more comprehensive policy that will cover damage from additional "perils" such as flood, acts of war or terrorism.



12. Violating Laws and Causing Disturbances

Most form leases and rental agreements contain a clause forbidding you and your guests from using the premises or common areas in such a way as to:

- violate any law or ordinance, including laws prohibiting the use, possession or sale of illegal drugs or controlled substances
- commit or permit waste (severe property damage), or
- create a nuisance by annoying, disturbing, inconveniencing or interfering with the peace and quiet, safety and comfort of any other tenant or nearby resident.

Chapter 16, Section D, describes the types of illegal and immoral conduct that can lead to eviction.

Waste and Nuisance: What Are They?

Committing waste means causing severe damage to real estate, such as a house or an apartment unit—damage that goes way beyond ordinary wear and tear. Punching holes in walls, pulling out sinks and fixtures and knocking down doors are examples of causing waste. Permitting waste means letting avoidable damage happen. Failing to close windows during a rain storm, not putting out a small fire or letting a tub overflow are examples of permitting waste. Chapter 9, Section F, provides more details on a tenant's duty to avoid waste.

Nuisance means conduct that prevents tenants and neighbors from fully enjoying the use of their homes, or which threatens their health and safety. Continuous loud noise and foul odors are examples of legal nuisances that may disturb nearby neighbors. So, too, are selling drugs or engaging in other illegal activities that greatly disturb neighbors or put them at risk.

13. Right to Quiet Enjoyment

Your lease or rental agreement may also reference your right to "quiet enjoyment" of the premises. Some people erroneously assume that this is a landlord promise to keep your premises free of noise. But as courts define it, the "covenant of quiet enjoyment" amounts to an implied promise by the land-

lord that he will not act (or fail to act) in a way that seriously interferes with or deprives you of your right to sole and exclusive use of the premises.

To establish a breach of the covenant of quiet enjoyment, a tenant must show an actual or constructive eviction from the premises. (*Grammen v. Turits*, 271 A.D.2d 644, 706 N.Y.S.2d 453 (2d Dep’t 2000).) Generally, that means that you have lost the use of at least part of your premises due, for example, to a collapsed ceiling or fire. A landlord’s wrongful act that makes it impossible to occupy all or some part of the premises may also be considered a constructive eviction and a breach of your right to quiet enjoyment of the premises. An example would be severe water leakage into one or more of the rooms of your rental unit, due to your landlord’s failure to make necessary roof repairs. Chapter 9 discusses your legal options if faced with conditions in your apartment or building that threaten your health and safety.

14. Pets

Landlords have the right to prohibit all pets, or to restrict the types of pets allowed—for example, no dogs or ferrets but cats and birds are okay. However, a landlord can’t ban “service animals” used by blind, deaf or physically or mentally disabled people, as provided by the federal Fair Housing Amendments Act, discussed in Chapter 11, Section A.

Many landlords spell out pet rules—for example, that dogs must always be on a leash, or that cats and dogs be spayed or neutered, licensed and up-to-date on vaccinations—in a separate set of rules and regulations (see Section 17, below).

Some landlords allow pets but require tenants to pay a separate deposit to cover any damage that may be caused by a pet. That’s legal, as long as the landlord treats the money like any other security deposit. (Chapter 5 discusses the rules that landlords must follow when accepting a tenant’s security deposit.) There are two exceptions, however. If you are a rent-stabilized tenant, the landlord may not request a security deposit that exceeds a month’s rent. If your landlord demands one, you may file an overcharge complaint with the DHCR seeking a refund. (Chapter 4, Section H, explains how to file an overcharge complaint.) It is also illegal for a landlord to charge an extra pet deposit for disabled tenants with service animals.



See [Dog Law](#), by Mary Randolph (Nolo), for more information on renting to pet owners.

15. Landlord’s Right of Access

Most leases and rental agreements spell out rules covering the landlord’s right to enter your rental unit, including circumstances allowing access and the minimum amount of notice the landlord must provide. Under New York law, landlords may reserve the right to gain access to your rental unit to make repairs or to show the premises for sale or rental, provided you are given reasonable notice. In most cases, 24 hours is presumed to be a reasonable amount of notice for non-emergency access.



Rent-stabilized tenants must provide access in certain circumstances.

Rent stabilization laws require tenants throughout the state to provide access to landlords and their agents for emergency or necessary repairs and improvements, inspections, and to show their units to prospective tenants, purchasers and mortgagees. (See, for example, 9 NYCRR § 2524.3(e).)

Your contract may also require you to provide the landlord with duplicate keys for any locks you re-key or install, and to get your landlord’s prior permission before installing a burglar alarm system. If you are moving into a building with three or more units in New York City or Buffalo, state law already requires you to supply the landlord with duplicate keys to any privately installed locks. (MDL § 51-c.)

Even if your contract is silent on the access issue, local laws and rent regulations may nevertheless provide a right of access to your landlord. Chapter 8 reviews New York City’s “Owner’s Right of Access” law (NYC Admin. Code § 27-2008), and other issues related to the landlord’s right of entry, including notice requirements in different circumstances.

16. Possession of the Premises

Leases and rental agreements begin on a certain date, at which time the landlord is expected to give you the keys to your new rental unit so you may move in. But what happens if the landlord can’t deliver a vacant rental unit on that date? Most leases and rental agreements cover the situation when the landlord is unable, for reasons beyond her control, to turn over possession to you after having signed

the contract—for example, if the prior tenant doesn't move out on time or, despite the landlord's best efforts, the unit is not yet ready for occupancy.

Usually, the clause gives the landlord 30 days or so to deliver possession of the premises to you, but suspends your rent obligation until the unit becomes ready for occupancy. If after 30 days the unit still isn't ready, such clauses typically give you the option to cancel the contract. Such clauses generally limit the landlord's financial liability to the return of your security deposit and any prepaid rent. This means that you may not sue the landlord for any out-of-pocket expenses, such as hotel bills, that result from the landlord's failure to deliver possession of the unit to you.

The contract may also contain a clause explaining what happens if you choose not to take possession or move in after signing the lease or rental agreement. Generally, you will still be required to pay rent and satisfy other conditions of the contract. This does not necessarily mean, however, that your landlord can sit back and expect to collect rent from you for the entire lease or rental agreement term. Instead, as we explain in Chapter 18, Section E, some judges require the landlord to mitigate—or minimize damages when a tenant abandons a lease by re-renting it.



If the unit is covered by rent stabilization, you are required to use the premises as a primary residence. As a result, leases for rent-stabilized units usually require you to take occupancy of the premises within 15 days or so after the lease begins. If you fail to maintain the premises as a primary residence, the landlord may terminate your tenancy. Chapter 16, Section F, examines the primary residence requirement.

17. Tenant Rules and Regulations

Many landlords don't worry about detailed rules and regulations, especially when they rent single-family homes or duplexes. However, in apartment buildings and complexes, rules are an effective way to control the use of common areas and equipment—both for the convenience, safety and welfare of the tenants and as a way to protect the property from damage. Rules and regulations also help avoid confusion and misunderstandings about day-to-day issues such as where bikes and strollers should be stored or parked.

The rules and regulations are sometimes spelled out right in the lease or rental agreement or on a separate “rider” which gets attached to the lease. Landlords can evict tenants who persist in seriously violating tenant rules and regulations, so make sure you read them.

What's Covered in Tenant Rules and Regulations

Tenant rules and regulations typically cover issues such as:

- storage of bikes, baby strollers and other equipment in halls, stairways and other common areas
- elevator use
- pool rules
- refuse and recycling
- lock-out and lost key charges
- pet rules
- carpeting obligations
- specific details on what's considered excessive noise
- prohibitions on dangerous materials—for instance, a ban on certain flammables or explosives
- specific tenant maintenance responsibilities—such as not permitting any acids or foreign objects to be placed in plumbing fixtures; replacing broken windows; lawn and yard maintenance
- use of the grounds
- maintenance of fire escapes, terraces, balconies and decks—for instance, no storing property on fire escapes; no grilling or barbecuing
- display of signs in windows
- laundry room rules
- waterbed rules
- vehicles and parking regulations—for example, restrictions of repairs on the premises or types of vehicles (such as no RVs), or where guests can park.

18. Default and Termination

Almost every lease or rental agreement contains a default and termination clause, which sets out the rules the landlord must follow to terminate your

tenancy for a violation of your lease. Usually, such clauses give the landlord a right to begin “summary” eviction proceedings against you for violations (or “defaults”) of the lease or rental agreement, such as not paying rent or illegally subletting the unit. (Eviction proceedings are called “summary” because they’re designed to move through court very quickly.) It’s critical to understand how this clause operates, since it sets the ground rules for legal disputes with your landlord. In addition to describing the type of notice (or notices) you must receive before your landlord may resort to legal action, this clause also sets relevant time frames for curing violations and for termination. If your landlord doesn’t carefully follow the notice requirements described in the default clause when demanding rent or terminating the lease, a later eviction proceeding against you is likely to be dismissed.

For rent defaults, New York law requires that you receive a rent demand providing you with at least three days to pay rent or leave before the landlord may begin an eviction proceeding. This right cannot be waived or limited in the contract. Chapter 15 explains your right to a rent demand and how to respond to nonpayment eviction papers.

Default clauses also address the procedure that the landlord must take to advise you of other types of default besides not paying rent—for example, if you violate an important term of your lease or rental agreement by making too much noise or keeping a pet in violation of a no-pet clause. Generally, these clauses require the landlord to first give you a notice of the violation with a set number of days (ten or so) to remedy (or “cure”) it. If you don’t remedy the violation by the deadline, the landlord can issue a termination notice. Chapter 16 explains the default notices you must receive before your landlord can begin a “holdover” eviction proceeding against you, and how to respond to such notices.



If you are a rent-stabilized tenant, applicable rent regulations set minimum notice requirements for notices to cure and notices of termination for non-rent defaults. Some rent-stabilized leases may provide for a different amount of notice than is required under the regulations. Where there is a conflict between the lease and the regulations, you must be given the longer of the two conflicting notice periods. Chapter 16 discusses default and termination notice periods for rent-stabilized tenants.

19. Attorney Fees in a Legal Dispute

Many tenants assume that if they win a lawsuit, the court will order the losing party to pay their attorney fees and court costs (filing fees, service of process charges, deposition costs and so on). In actuality, a court may order the losing party to pay the winner’s legal fees and costs only if a written agreement or statute specifically provides for it.

There are two types of attorney fees clauses commonly found in leases and rental agreements:

- **The “loser pays” attorney fees clause.** This common and even-handed clause requires the losing side in a landlord-tenant dispute to pay attorney fees and court costs to the winning or “prevailing” party in a legal action or proceeding. With this clause, if you win a lawsuit (or you settle, and the settlement specifies that you are the prevailing party), the judge will order your landlord to pay your reasonable attorney fees and court costs. This assumes, of course, that you hired a lawyer to bring or defend the case for you.
- **The losing tenant pays.** Some landlords include a one-sided clause that obligates you to pay the landlord’s attorney fees and costs if the landlord wins. But if the landlord loses, the clause says the landlord isn’t obligated to pay your expenses. Fortunately, New York law protects tenants from unfair, one-sided clauses like this. Real Property Law § 234 makes attorney fees clauses in leases or rental agreements work both ways, even if the landlord hasn’t written it that way. So, if the clause states that the landlord is entitled to attorney fees if he wins a lawsuit, you will be entitled to collect your attorney fees from the landlord if you prevail.

Chapter 15, Section J, explains how to claim attorney fees in your answer to a nonpayment eviction petition. Chapter 16, Section J, looks at claiming attorney fees in an answer to a holdover eviction proceeding.



Attorney fees clauses don’t cover all legal disputes. They cover fees only for lawsuits that concern the meaning or implementation of a rental agreement or lease—for example, a dispute about rent, security deposits or your right to access (assuming that the rental document includes these subjects). An attorney fee clause would probably not apply in a personal injury or discrimination lawsuit.

20. Waiver Clauses

Contracts sometimes contain clauses in which you waive, or give up, certain legal rights you would otherwise have in a lawsuit over the contract. There are two tenant waivers commonly found in New York leases and rental agreements: the jury waiver and the counterclaim waiver clauses.

a. Jury Waiver

A jury waiver clause prevents you (and the landlord) from demanding a jury trial in any legal action brought for rent or possession of the premises. (It's illegal for a landlord to ask a tenant to give up the right to a jury trial in a personal injury or property damage lawsuit, however. (RPL § 259-c.)) As a result, your eviction proceeding must be heard by a judge instead of a jury. Since the process of selecting a jury can drag on for days, landlords insert jury waiver clauses in their leases and rental agreements in order to speed evictions. Another reason is because most jurors have been tenants at some point in their lives, making them more sympathetic to tenants than to landlords. If there's no jury waiver clause in your lease or rental agreement, you are legally entitled to demand a jury trial. Your right to a jury trial in eviction proceedings is discussed in Chapter 15, Section I.

b. Counterclaim Waiver

The other type of waiver is the counterclaim waiver clause which, if you're sued for eviction, bars you from counter-suing the landlord. That means that if you're sued for back rent, for example, you can't use the landlord's suit as an opportunity to sue him for something else, such as an injury you sustained when the shower water got too hot.

Counterclaim waiver clauses aren't ironclad, though. Judges are free to disregard them if your claim is closely intertwined with the landlord's claim for rent or possession. For that reason, tenants may make warranty of habitability counterclaims when sued for unpaid rent, even when the lease contains a counterclaim waiver clause. A tenant's obligation to pay rent is closely intertwined with a landlord's obligation to keep the premises livable. But a counterclaim waiver clause would probably keep you from being able to interpose a claim for discrimination or personal injury. Chapter 15, Section J, discusses counterclaims commonly raised by tenants in non-payment eviction proceedings. Chapter 16, Section J,

looks at tenant counterclaims in holdover eviction proceedings.

21. Required Disclosures and Riders

Federal, state and local laws require your landlord to make certain disclosures before you sign a lease or rental agreement. The disclosure may be included within a lease clause, on a separate page of the lease or rental agreement, or in a "rider" that is attached to and forms a part of the contract. The required disclosures, which depend on where you live and the size, age and rent-regulatory status of the property include:

- for all tenants, the name and address of the bank where security deposits are held (discussed in Section 6, above, and Chapter 5)
- if the date on the building's certificate of occupancy was before 1978, an updated lead paint disclosure form, if required under federal law (see Subsection a, below),
- if the building is located in New York City and has three or more units, a "window guard" notice informing you of the landlord's legal obligation to install window guards in the rental unit if a child ten years of age or younger lives there or if you request window guards (see Subsection b, below)
- If the unit is a New York City rent-stabilized apartment, a DHCR Rent Stabilization Rider (Subsection c, below), and
- if the building is located in New York City, was constructed before 1960 and has three or more units, a New York City Lease Commencement Lead Hazard notice and pamphlet (Subsection d, below, explains this requirement).

a. Federal Lead Hazard Disclosure Requirements for Pre-1978 Housing

Since 1996, all landlords must inform tenants, before they sign or renew a lease or rental agreement, of any information they possess on lead paint hazard conditions on the property. They must disclose information on its presence in individual rental units, common areas and garages, tool sheds, other out-buildings, signs, fences and play areas. If the property has been tested (testing may only be done by state-certified lead inspectors), a copy of the report or a summary written by the inspector must be shown to tenants.

With certain exceptions (listed below), every lease and rental agreement must include this disclosure, even if the landlord has not tested. A copy of the federally approved disclosure form, “Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards” is reprinted in Appendix B. In addition, the landlord must give all tenants the lead hazard booklet “Protect Your Family From Lead in Your Home,” written by the Environmental Protection Agency (EPA). If they choose, landlords may reproduce the booklet in a legal-size format and attach it to the lease.

Some rental properties are exempt from the federal lead hazard disclosure regulations. They include:

- Housing for which a construction permit was obtained, or which construction was started, after January 1, 1978. Older buildings that have been completely renovated since 1978 are not exempt, even if every painted surface was removed or replaced.
- Housing certified as lead-free by a state accredited lead inspector. Lead-free means the absence of any lead paint, even paint that has been completely painted over and encapsulated.
- Lofts, efficiencies, studios and other zero-bedroom units, including dormitory housing and rentals in sorority and fraternity houses. University-owned apartments and student housing are not exempt.
- Housing designed for persons with disabilities (as explained in HUD’s Fair Housing Accessibility Guidelines, 56 CFR 9472, 3/6/91), unless a child under six resides there or is expected to reside there.
- Retirement communities (housing designated for seniors, where one or more tenant is at least 62 years old) unless children under the age of six are present or expected to live there.

If your landlord has not given you a disclosure form or an EPA booklet, ask for them. If you get no results, notify the EPA. This will probably result in no more than a letter or call from the EPA inspectors, since the agency doesn’t cite landlords unless their noncompliance is willful and continuing. A landlord who continues to ignore the law may find himself subject to penalties of up to \$10,000 and may have to pay an insured tenant three times what the tenant suffered in damages. For more information on landlord responsibilities for lead paint hazards and how to report a problem, see Chapter 9, Section E1.

b. New York City Window Guard Notice



Skip this section if you are renting a unit outside New York City or in a New York City building with only one or two units.

If the building is located in New York City and has three or more units, New York City law requires your lease or rental agreement to have a “Window Guard Notice,” in a form approved by the Department of Health. A window guard is a metal device with bars that attaches to the exterior of the window and is designed to keep children from falling out. The notice informs you of the landlord’s legal obligation to install anti-fall window guards in the rental unit if a child ten years of age or younger lives there or if you request window guards. (NYC Admin. Code § 17-123; Department of Health Regs. § 12-02.) A window guard notice is reprinted in Appendix B.

You must check one of three boxes on the notice indicating whether a child ten or under is, or will be, residing in the rental unit, or if you want window guards, even though no young children are living in the apartment. After checking one of the boxes, sign and date the rider. The anti-fall window guard notice is also discussed in Chapter 9, Section B, along with your landlord’s other required repair and maintenance obligations.

c. DHCR Rent Stabilization Rider for New York City Tenants



Skip this section if you are renting a non-regulated unit or a rent-stabilized apartment outside New York City.

The New York City Rent Stabilization Law requires your landlord to attach a “Rent Stabilization Lease Rider for Apartment House Tenants Residing in New York City” (DHCR Form RA-LR1) to your “vacancy” lease (the first lease you get) and any subsequent “renewal” leases (which extend your tenancy for one or two years, at your option). Section E, below, explains how and when renewal leases are offered.

The eight-page Rider describes the rights and obligations of tenants and landlords under the Rent Stabilization Law. A copy of this Rider is reprinted in Appendix B. The Rent Stabilization Rider is only informational. Its provisions do not modify or become part of the lease. If you don’t receive a copy of the

Rider, you may file a complaint with the DHCR. The agency usually responds by issuing an order directing the landlord to provide the tenant with the Rider. If the landlord doesn't comply with the order within 20 days, the rent increases provided for in the new lease will be postponed until the Rider is provided. The landlord may also be fined.

If you're signing a vacancy lease, pay special attention to Provision 5 of the Rider, titled "FOR VACANCY LEASES ONLY." It tells you what the legal regulated rent in effect for your apartment was immediately prior to the vacancy, and explains how your rent was computed. You can check the landlord's math by reading Chapter 4, Section F, which explains how to calculate a "vacancy" rent increase. The amount of rent that appears as the "New Tenant's Rent" on page 3 of the Rider must agree with the rent stated in your lease.

Also, check the Rider to find out if you are the first rent-stabilized tenant for the apartment. If the apartment was rent-controlled when the last tenant moved out, the landlord must check box 5(B). As explained in the Rider, you may challenge the fair market rent set by the landlord by filing a "Fair Market Rent Appeal" with DHCR within 90 days of taking occupancy. For details, see Chapter 4, Section E.

d. New York City Lead Paint Notification Forms



Skip this section if you are renting a unit: 1) outside New York City, 2) in a New York City building with only one or two units, or 3) in a New York City building constructed after 1960.

New York City's Lead Poisoning Prevention and Control Law (NYC Admin. Code § 27-2056) places two tenant notification requirements on landlords of pre-1960 buildings with three or more units:

1. a notice inquiring whether a child under age six resides or will reside in the rental unit, and
2. a pamphlet explaining the hazards associated with lead-based paint, "A Guide to New York City Local Law 38 of 1999."

The notice and the pamphlet (reprinted in Appendix B) must be given to the tenant when the lease or rental agreement is signed, or, where there is not a written rental agreement, when the tenant begins occupancy of the rental unit. Each January thereafter, the landlord must deliver an annual notice inquiring whether a child under age six resides in the rental

unit. The landlord does not need to redistribute the pamphlet. Tenants have a continuing legal obligation to inform the landlord in writing if any child under six years of age later takes occupancy.

If the landlord gets written notice that a child under six lives in your rental unit, the landlord must perform an annual visual inspection of the unit for "lead based paint hazards." Chapter 9, Section E1, explains how to identify a hazard, details your landlord's abatement responsibilities if a lead hazard is found and lists government agencies to contact for more information or to report a lead hazard in your unit.

22. Notice Clauses

During the course of a tenancy, both you and your landlord may need to give the other an official notice to, say, exercise a renewal option, cure a breach or terminate the tenancy. Most leases and rental agreements specify the form and manner in which all required notices must be given, when the notice is deemed effective, who may issue or sign the notice and to whom and where notices must be directed. Some landlords want to handle all of this themselves, while others delegate it to a manager, management company or other agent.



Read the notices section of your lease carefully before sending an important notice to your landlord.

Sometimes the person you call your landlord is just an officer or agent for a big corporation that owns the building. To be legally effective, your notice must go to the person or entity at the address listed in this section of your lease. You can always give a copy to the person who handles the day-to-day operations at the property if you think that will help.

Tenants also might want notices to you to go to someone else, such as your lawyer, accountant or a family member. Just make sure the person you designate to receive notices is almost always available to promptly transmit copies to you or your attorney. Be sure to keep your landlord up-to-date on any changes in this information. If the notice section of your lease or rental agreement directs the landlord to send a notice to a stale address, for instance, you may never get an important notice to cure or termination notice. If that happens, eviction papers could be your first notice that there's any problem with your

tenancy. Chapter 16 explains how to respond to termination notices and holdover eviction papers.

23. Abandoned Property

If you leave personal property or other belongings in the rental unit when you move out, may your landlord discard it, keep it or store it? There's no New York statute or clear-cut procedure that landlords must follow. So, in most cases, the answer lies in the lease or rental agreement.

Most leases and rental agreements require you to remove all personal property and belongings from the unit when you move out, including any fixtures you've attached to the unit's ceilings, walls and floors. If any of your property remains after the tenancy ends, the abandoned property clause might give the landlord a right to discard it or store it at your expense. Such clauses may also authorize the landlord to charge you for any extra costs incurred for removing your belongings or storing them. Chapter 18 discusses a landlord's right to take security deposit deductions for expenses related to removing abandoned personal property from the rental unit after you've moved out.

24. Renewal Provisions



If you're signing a lease for a rent-stabilized unit or have a month-to-month rental agreement, you may skip this section. The renewal rights of rent-stabilized tenants are guaranteed by statute, no matter what the lease says. See Section E, below, for more information on renewal lease procedures for rent-stabilized units. You may also skip this section if you have a month-to-month rental agreement. These renew themselves at the end of each month until either the landlord or tenant elects to terminate the tenancy. Chapter 14 details the manner in which month-to-month rental agreements may be terminated.

Unless the lease provides for automatic renewal or an option to renew, your tenancy will end on the last day of the stated term. If you stay past the expiration date of your lease, the landlord may begin holdover eviction proceedings to remove you from the property. Chapter 16 discusses your legal options when served with holdover eviction papers.

If you think you may wish to stay in the rental unit for longer than the initial lease term, ask your land-

lord to include a renewal option in your lease. Landlords sometimes agree. To be enforceable, a renewal option clause must be written with precision. To be valid, your renewal should cover these points:

- the length of the renewal term offered (one year, for example)
- the time period in which you must notify the landlord that you've elected to renew the lease (for instance, at least four weeks prior to the expiration of the lease)
- the manner in which you may notify the landlord that you have elected to renew—for example, in writing by mail or personal delivery, and
- the specific amount of rent payable under the renewal lease, or in the alternative, a formula to compute a rent increase based on an objective measure (such as a specified consumer price index).

A renewal option clause may not omit key terms, such as the amount of rent payable under the renewal lease, or leave such terms to future negotiation. A lack of specificity will render the clause a mere (an unenforceable) “agreement to agree.”

C. Unenforceable Lease Clauses

Many form leases include provisions that appear to benefit the landlord but, in actuality, are prohibited under state statute or public policy, rendering them unenforceable. You won't be bound to an unenforceable lease clause, even though you may have read, acknowledged or signed the provision. Listed below are a variety of void and unenforceable clauses that you may nevertheless find in your proposed lease or rental agreement. If the landlord won't agree to take them out, don't sweat it. Courts won't enforce them.

- **Right to habitable housing.** Tenants may not waive or modify the protections of the warranty of habitability. (RPL § 235-b.) Chapter 9 explains the scope of your landlord's obligations under the warranty of habitability.
- **Right to share rental unit with roommates.** Tenants may not give up their right to share their unit with immediate family members and roommates, in accordance with RPL § 235-f. Chapter 7 details your apartment sharing rights.
- **Sublet rights.** A tenant with a lease has a right to the landlord's reasonable consent to a sublet

and to terminate the lease if this consent is unreasonably withheld. (RPL § 226-b.) Chapter 12 explains a tenant's right to sublet.

- **Protection from retaliatory eviction.** A tenant's legal protection against a landlord's retaliatory eviction cannot be waived. (RPL § 223-b.) Chapter 11 explains retaliation.
- **Right to form and join tenants' associations.** Landlords may not prohibit, restrict or interfere with a tenant's right to join or form a tenants' association or with the right of such organizations to meet in the property's common areas. (RPL § 230.)
- **Right to bear children.** It's a criminal misdemeanor to insert a clause in a lease or rental agreement that requires the tenant to remain childless or not bear children during the course of the tenancy. (RPL § 237.) Chapter 11 covers illegal discrimination against families with children.
- **Exculpatory clauses.** Clauses which attempt to absolve the landlord in advance from responsibility for all damages, injuries or losses caused by his or her negligence are void. (GOL § 5-321.) If you are injured because of a dangerous condition the landlord knew about but failed to fix for an unreasonably long time, no such boilerplate lease language will protect him from civil and possibly even criminal charges.
- **Tenant's reciprocal right to attorney fees.** If your agreement gives the landlord a right to recover legal fees and court costs from the tenant, you may not waive a reciprocal right to recover these fees and costs. (RPL § 234.) Section B19, above, covers attorney fees.
- **Jury trial in a personal injury or property damage action.** Neither landlords nor tenants can waive a right to a jury trial in a lawsuit or counterclaim for personal injury or property damage. (RPL § 259-c.)
- **Shared meters.** A tenant's protections under the shared meter law cannot be waived (Public Service Law § 52), as discussed in Chapter 6.
- **Rent control and rent stabilization benefits and protections.** A rent-regulated tenant may not give up any of the benefits or protections afforded under the rent control and rent stabilization laws and regulations. Chapter 4 specifies benefits and protections of a rent-regulated tenancy.

- **Security deposit rights.** A tenant may not give up the right to have a security deposit held in trust, and to notification of the bank in which it is held. (GOL § 7-103.) Chapter 5 discusses these and other related security deposit safeguards.
- **Protection from automatic termination for non-payment of rent.** A tenant's lease or rental agreement may not be terminated on the ground that the tenant has failed to pay rent. Chapter 15 explains your statutory right to a rent demand and how to respond to nonpayment eviction proceedings.

D. Signing a Lease or Rental Agreement

At the end of the lease or rental agreement, there's a space where you and your landlord place your signatures. This is your consent to be bound to all of the terms and obligations of the lease or rental agreement, as well as any attached notices or riders. If you or the landlord alter a pre-printed lease form by writing or typing in changes, be sure that the landlord and all tenants initial the changes when you sign the document, so as to forestall any possibility that the landlord will claim you unilaterally inserted changes after he or she signed it.

1. Who May Sign a Lease or Rental Agreement?

Any competent adult—at least 18 years of age—may be a party to a lease or rental agreement. (RPL § 11.) If you're a minor, the landlord may refuse to let you sign on as a tenant. That's because minors who sign leases, rental agreements (and other contracts) may "disaffirm," or cancel them within a reasonable time after turning 18. The exception is a minor who is legally "emancipated," as explained in Chapter 11, Section A6.

You can use your business name as the tenant for your residential lease, as long as the landlord consents. Some sole proprietors put their residential lease into their company's name for tax purposes. And many businesses lease apartments for specified key executives, or for employees and guests who are visiting or temporarily working at the company's New York office. Expect your landlord to insist, however, that the premises be used only for residential purposes. And if the apartment is rent stabilized, the landlord may also require that the lease name a specific person

who will have the right to occupy the apartment. (See Chapter 16, Section C, for more information on permitted business uses for rental units.) The landlord may wish to see your company's certificate of incorporation or partnership agreement, to make sure that your business is duly authorized to lease real estate and that you have authority to sign and bind the company to a lease.

2. How Many Copies of the Lease Get Signed?

You can expect the landlord to put together two copies of the lease or rental agreement, one for each of you. If there is more than one tenant, don't expect the landlord to prepare a separate agreement for each co-tenant. After the agreement is signed, you and your co-tenants can make your own copies of the lease or rental agreement.

Each tenant should sign both copies of the lease or rental agreement. Some landlords will require a witness, such as your rental agent or manager. While witnesses aren't required to make the lease legally valid, a witness could help the landlord "authenticate" the lease in court later on, if she needs to have it introduced as evidence in an eviction trial. Make sure the lease you get is signed by the landlord, not just you and your co-tenants.



3. Lease Guarantors and Co-Signers

If the landlord has doubts about your ability to pay the rent, you can offer to have a more financially secure person act as a guarantor. Some landlords will accept (or require) guarantors, also known as co-signers, on rental agreements and leases, especially when renting to students who depend on parents for much of their income. The guarantor signs a separate agreement, called a guaranty, under which he or she agrees to be jointly and severally liable with the tenant for the tenant's obligations—that is, to cover any rent or damage-repair costs the tenant fails to pay. (Chapter 7, Section A, discusses the concept of joint and several liability.) The guarantor remains responsible even if the tenant sublets or assigns his agreement. However, if the rental agreement or lease is modified or renewed, the guarantor or co-signer will no longer be on the hook unless he or she signs the new document.

E. Renewal Lease Rights for Rent-Stabilized Tenants

As long as rent-stabilized tenants pay rent, they are legally entitled to successive renewals of their rent-stabilized lease. (9 NYCRR §§ 2503.5; 2523.5.) The renewal lease must be offered for a term of one or two years, at your option. The terms and conditions of the renewal lease must be the same as the expiring lease, except for any additional provisions permitted by law or under rent stabilization. However, rent may be increased in accordance with the applicable order of your local rent guidelines board. In this section, we tell you how and when your landlord must offer you a renewal lease, and how to properly accept it.



Rent-controlled tenants aren't required to get renewal leases. The original lease for your rent-controlled apartment probably expired long ago. Your landlord is not legally required to offer you a written renewal lease. Fear not. Rent control laws—not a lease—permit rent-paying tenants to stay without a lease unless the landlord has grounds to terminate your tenancy. Chapter 16 details the limited grounds upon which rent-controlled tenancies may be terminated.

When Your Landlord May Refuse to Renew Your Rent-Stabilized Lease

While the general rule is that rent-stabilized tenants must be offered renewal leases, qualified landlords may refuse to renew the lease in the following limited circumstances.

- the landlord seeks the apartment in good faith for personal use or for the use of immediate family
- you do not occupy the unit as your primary residence
- the landlord wishes to demolish the building in which the unit is located and build a new one, or
- the landlord requires the apartment or land for use in connection with the landlord's business.

In order to refuse to renew a tenant's lease on any of these grounds, the landlord must send special non-renewal notices to you during the time period you would otherwise be offered a renewal lease, and in some cases, must apply to the DHCR for a certificate of eviction. Chapter 16 covers the permissible grounds for ending rent-stabilized tenancies and the notice procedures the landlord must follow.

1. Your Right to a Renewal Lease in New York City

At least 90 days and not more than 150 days before your current lease is set to expire, your landlord is required to notify you in writing of the date your lease is set to expire and that you may choose to renew for a term of one or two years. The notice must also state the amounts by which the monthly rent (and required security deposit) will increase under a one- or two-year renewal lease, based on the renewal rent increases authorized by the New York City Rent Guidelines Board. (For details on computing renewal rent increases, see Chapter 4, Section G.) Finally, the notice must set out any additional lease provisions permitted by law or under the Rent Stabilization Code.

New York City landlords must use a one-page DHCR form called "Renewal Lease Form" (RTP-8) for this purpose. (A copy is reprinted in Appendix B.) Spanish-speaking tenants may request a Spanish version of the form. After receiving two copies of the renewal lease form, you have 60 days to accept the renewal offer by completing and signing both copies

of the form and returning them to the landlord in person or by regular mail. The landlord has 30 days from receipt of the renewal forms signed by you to send a fully executed renewal lease form back to you.



Make a copy of the signed form before you send it back to the landlord and get a proof of mailing receipt from the post office if you mail it. Some landlords don't sign renewal forms after getting them back from the tenant, and later try and evict on the ground that the tenant refused to renew the lease. By making a copy of the signed renewal and a getting a mailing receipt, you'll be able to defend yourself in court if necessary.

2. Your Right to a Renewal Lease Outside New York City

At least 90 days and not more than 120 days before a tenant's lease is set to expire, your landlord is required to notify you in writing that the lease will soon expire and that you may renew it for a one- or two-year term. The notice must also inform you of the monthly rent (and security deposit) increase authorized by the county Rent Guidelines Board for one- and two-year renewal. (For details on computing renewal rent increases, see Chapter 4, Section G.) Finally, the notice should set out any additional provisions permitted by law or under the Rent Stabilization Code.

Landlords must use a DHCR form called an "ETPA Notice of Renewal of Lease" for this purpose, and must send it to you by certified mail. After you receive a renewal notice, you have 60 days to accept the renewal offer by signing the notice or form, and sending it back. *You must send your acceptance by certified mail, return receipt requested.* The landlord then gets 30 days to send you back a fully executed renewal lease form, to which must be attached an updated lead paint disclosure form, where applicable (discussed above in Section B21).

3. Landlord's Failure to Offer or Supply Renewal Lease

If the owner does not return a copy of the fully executed Renewal Lease Form to the tenant within 30 days of receiving the signed lease from the tenant, the tenant may file the "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease" (DHCR form RA-90). ■



Basic Rent Rules

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No one likes feeling ripped off by rent gouging or bogus late fees. But it's often tough for tenants to know what's legal and what's not when it comes to paying rent. This chapter explains basic state laws affecting how much rent your landlord can charge, as well as where, when and how rent is due. It also covers rules regarding grace periods, late rent fees, rent receipts, returned check charges and rent increases.



If you're lucky enough to live in one of the 1.2 million rental units in the state that are subject to rent control or rent stabilization laws, be sure to read Chapter 4. It covers issues of specific concern to rent-regulated tenants, including limits on rent, permitted rent increases and what to do if you think you're being overcharged. Rent-regulated tenants should also read this chapter because it covers issues of interest to all tenants, such as late fees and rent receipts.



Related topics covered in this book include:

- Lease and rental agreement provisions relating to rent: Chapter 2
- Rules covering security deposits and last month's rent: Chapter 5
- Co-tenants' and roommates' obligations for rent: Chapter 7
- How and when you can withhold rent for repair problems: Chapter 9
- Dealing with a rent demand notice or nonpayment proceeding: Chapter 15
- Issues regarding last month's rent and security deposit deductions for unpaid rent: Chapter 18.



Model Letters and Sample Forms in This Chapter

- Agreement for Delayed or Partial Rent Payments

A. How Much Can Your Landlord Charge?

The general rule is that there's no limit to how much rent your landlord may charge. Landlords can set rents according to what the market will bear. And lately, it seems like the sky's the limit.

But there's a big exception to this rule: Landlords may not set market rents for units that are covered by some form of government rent regulation—that would be the 1.2 million rental units around the state that are subject to either rent control or rent stabilization, the two principal forms of rent regulation in New York.

Since landlords can be arbitrary about the rents they set for non-rent-regulated units, it pays to shop around a bit before signing a lease or rental agreement. You might be lucky enough to land a rent-stabilized apartment if you're looking for a place in New York City or the suburban counties of Nassau, Rockland or Westchester. But if you can't snag a rent-regulated unit, try to determine the market value of a rental unit you are considering by checking newspaper and Web rental listings for comparable properties in the area; and since ads can be misleading, it's a good idea to visit a few places that sound similar to the unit you're considering. (Chapter 1 provides information on how to find rental listings.) That way, you can figure out whether or not you're getting a fair deal on rent for a particular unit.



State law permits landlords to offer rent breaks to senior citizens and disabled tenants.

(Exec. L. § 296 (17), (19).) While anti-discrimination laws require landlords to treat rent applicants in an even handed way, there's an exception carved out for seniors and the disabled. So don't be shy about asking your landlord if any discounts are available.

B. When Is Rent Really Due?

Leases and rental agreements usually say that rent is to be paid monthly, in advance, on the first day of the month. But you and the landlord may mutually agree to any arrangement. While it's customary for rent to be due on the first of the month, it is perfectly legal for your lease or rental agreement to require rent to be paid on a different day of the month. Some landlords make the rent payable each month on the date the tenant first moved in. A date other than the first of the month might be preferable if your paycheck or other income comes in later in the month.

If your lease or rental agreement doesn't specify when your rent is due, the law presumes that rent is not due until *after* it has been earned, unless the lease or rental agreement says otherwise. (*Smathers*

v. Standard Oil Co., 233 N.Y. 617, 135 N.E. 942 (1922).) Because that means that the rent isn't due until the last day of the month, almost all leases and rental agreements call for advance payments.

Paying Rent More Than Once a Month

If the landlord agrees, you can arrange to pay the rent twice a month, each week, or on whatever schedule suits you. The most common variation on the standard monthly payment arrangement is paying rent twice a month. This is a particularly good idea if you don't have extra funds on hand and get paid twice a month, since it's easier than having to save the needed portion of your mid-month check until the first of the month.

1. The Grace Period Myth

Lots of tenants are absolutely convinced that if rent is due on the first, but they pay by the 5th (or sometimes the 7th or even the 10th) of the month, they have legally paid their rent on time because they are within a legal grace period. Unfortunately, this is a myth. A landlord may legally insist that rent be paid on the day it is due (unless that day falls on a weekend or holiday). In practice, many landlords do not get upset about late rent or collect a late fee (discussed below in Section E) until the rent is a few days past due. But they are not required to do so. In fact, landlords may make an oral or written rent demand as soon as you are just one day late with the rent.

2. When the Rent Due Date Falls on a Weekend or Holiday

If the rent due date falls on a weekend day or legal holiday, you get until the next business day to pay it. This extension of the due date is legally required under state law. (GCL §§ 20, 24, 25, 25-a.) That means that your landlord can't insist that you always deliver the rent check on the first, no matter what.

EXAMPLE: If your lease or rental agreement says that rent is due on the first day of each month, and April 1 falls on a Saturday, rent isn't due until Monday, April 3. If April 3 is a legal holiday, rent isn't legally due until Tuesday, April 4.

Figuring out the exact date when rent is due is important if you're served with a rent demand from the landlord. A rent demand that is made too soon won't be legally enforceable. And if the landlord begins an eviction lawsuit following a premature rent demand, you can ask the court to toss it out and make the landlord start over.

3. Evictions for Nonpayment of Rent

Failure to pay rent on time is by far the most common reason tenants are evicted. First, however, a landlord must issue a "rent demand" notifying you to either pay within a few days or move out. How long you're permitted to stay depends on what the lease or rental agreement says. The legal minimum is three days. Some leases and rental agreements require landlords to give the tenant as much as ten days' notice.

If you pay up in the time provided, that's the end of it. But if you don't pay the rent (or move) within the time provided in the notice, the landlord can begin a nonpayment eviction proceeding against you. After that, you can still pay up and avoid eviction, but you may be required to pay more. Depending on the terms of your lease or rental agreement, you could be on the hook for your landlord's legal fees, if you didn't have a good reason for not paying the rent on time.

Chapter 15 provides extensive details on rent demands and nonpayment eviction proceedings.

C. Where and How Rent Is Due

Your lease or rental agreement should specify where you should pay the rent and how it should be paid—for instance by cash, check, money order or electronic transfer. For most landlords, rental checks are routine. A few tips on other forms of payment:

- **Cash.** Don't pay in cash unless you get a written receipt (which should be signed and dated by the landlord, manager or other agent who takes the cash).
- **Credit cards.** While some big landlords accept credit cards, short of an emergency, paying your rent this way can be a bad idea. If you don't pay the full credit card bill right away, you can end up paying interest on your rent—definitely not a smart financial management strategy.

- **Automatic debits.** Be leery of giving your landlord permission to have rent payments debited automatically each month from your bank account. This arrangement prevents you from being able to withhold all or part of the rent for uninhabitable conditions and from deducting repair costs from your rent. These two tenant remedies are discussed at Chapter 9.

If your lease or rental agreement doesn't specify where you should pay your rent, the law presumes that the landlord will go to the tenant's unit to pick up the rent. (*M & E Design Co. v. Whitney's Cadillac Rental Inc.*, 75 N.Y.S.2d 924 (Sup. Ct., Queens County, 1947).) Chances are, you don't want your landlord knocking on your front door on the first day of each month. So whenever possible, have your landlord agree to a specific location where you can mail or drop off your rent check.

Don't Let Your Landlord Change the Rules of the Game

If you mistakenly bounce a rent check, your landlord might try and decree that from now on, he'll accept nothing less than a certified check or money order, and that rent may be paid only during certain hours at the manager's office.

But don't be so easily intimidated. It may be illegal for the landlord to suddenly change the terms for payment of rent without proper notice—unless he is simply enforcing an existing term. For example, if your rental agreement states that the landlord will accept only money orders, he is on solid ground when he tells you that he'll no longer accept your checks, and that his previous practice of doing so was merely an accommodation not required under the rental agreement.

If, however, your lease or rental agreement doesn't say where and how rent is to be paid, your past practice may legally control how rent is paid until the landlord properly notifies you of a change. If the landlord wants to require you to pay rent at his office, for example, he must formally change a written rental agreement with a written "rider" (Chapter 2, Section B, explains lease riders). Oral rental agreements may be changed orally—no written notice is required. But if you have a lease, the landlord will have to wait until the lease runs out to make a change.

D. Rent Receipts

If you pay rent by cash, money order or any form other than a personal check, state law requires the landlord to give you a written receipt. (RPL §235-e(a).) The rent receipt must contain the following information:

- date rent was paid
- amount of rent paid
- address of the rental unit
- time period for which rent is paid
- signature and title of the person who accepted the rent.



For NYC tenants only, the rent receipt must include the name and New York City address of the owner or managing agent. (NYC Admin. Code § 27-2105.)

If you make a written request for a rent receipt, landlords must give you one when you pay by personal check, too. (RPL § 235-e(b).) This might come in handy if another person, such as your parent or accountant, is issuing the checks to the landlord. The rent receipt requirement applies to all tenants, including those covered by rent control and rent stabilization laws.



The Housing Maintenance Code requires New York City landlords to provide either a rent bill or a rent receipt to every tenant each month. (NYC Admin. Code §27-2105.) Unlike state law, there's no exception for tenants who pay by check. All rent bills and receipts for payment must state the name and New York City address of the managing agent, as listed on the registration for the building with the City.

E. Late Charges and Discounts for Early Payments

If you pay your rent after the date it is due, some landlords will impose a late fee. Are late fees legal? It depends. New York landlords have no statutory right to late fees. It must be agreed upon in the lease or rental agreement. If there's no provision for a late fee in the lease or rental agreement, the landlord isn't entitled to it.

This said, your landlord may nevertheless collect a late fee if two conditions are met:

- Your lease or rental agreement provides for payment of late charges (*330 3rd Avenue Owners Corp. v. Valli*, NYLJ 5/27/97, p. 31, col. 5 (App.Term, 1st Dept.)), and
- The amount of the fee is not punitive, but reasonably related to the actual cost to the landlord of the late payment. (*67-25 Dartmouth St. Corp. v. Silbermann II*, NYLJ 8/11/93, p. 24, col. 5 (App.Term 2nd and 11th Jud. Dists.).)

As you can see, even if your lease or rental agreement provides for a late fee, if it's too big, it may not be enforceable. In other words, when it comes to late fees, size matters. While New York has no set limit on how big a late fee may be, landlords are still bound by general legal principles that prohibit unreasonably high fees. A lease or rental agreement that calls for a late fee which is disproportionate and way beyond the amount of money the landlord stands to lose (in interest and time spent reminding you to pay) is not enforceable. Though courts will enforce late fees that are authorized by the lease or rental agreement and which bear a realistic relationship to the landlord's actual losses, courts steadfastly refuse to enforce penalties that are intended to punish late-payers.

How big is too big? A late fee that's 5% of the monthly rent (that's \$50 per \$1,000-per-month in rent) is probably legal, since state law permits mobile home landlords to collect a 5% late fee when the rent is ten or more days late. (RPL § 233(r).) But if the late fee increases each day the rent is late, it could be considered interest charged at an illegal ("usurious") rate. Under New York law, interest charged at a rate exceeding 25% per year constitutes criminal usury. (Penal L. § 190.40.) Ten dollars a day on a \$1,000-per-month rent, for example, is 3,650% annual interest.

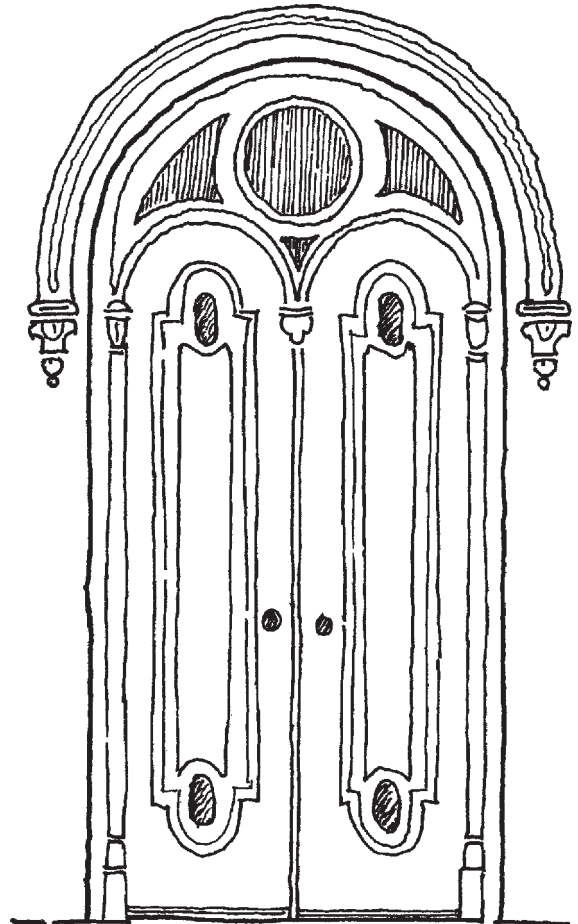


Watch out for late fees in sheep's clothing. Some clever landlords will try to disguise an excessive late fee as a discount for early payment. Here's how this ruse usually works: "The rent for the apartment is \$2,000 per month. But if you pay rent before the third day of the month, I'll give you a \$400 discount on the rent!" Translation: "The rent is really \$1,600 per month. If you pay rent on or after the third day of the month, you'll get slammed with a \$400 late fee (a 20% penalty)." Fortunately, smart judges usually see the discount for what it really is—a late fee in disguise. And if the amount of the discount is excessive, it probably won't be enforceable.

F. Returned Check Charges

It's legal for landlords to charge you an extra fee if a rent check bounces or is returned by your bank, so long as the lease or rental agreement authorizes the charge. New York landlords have no statutory right to returned check charges. If there's no provision for this type of fee in the lease or rental agreement, the landlord isn't entitled to it.

Like late charges, bounced check charges must be reasonable. The landlord should charge no more than the amount banks charge business customers for a returned check charge, probably \$20 to \$30 per returned item, plus a few dollars for extra administrative trouble. If a landlord sues you to collect an unreasonably high returned check fee, most judges (especially in New York City) will refuse to enforce the fee, meaning that you wouldn't be required to pay all of it or the portion that was declared unreasonable.



G. What to Do If You Can't Pay Rent on Time

If you suffer a temporary financial setback and can't come up with your rent, your best course of action is to be up front with your landlord about it. Otherwise, the landlord is apt to issue a demand for the rent—the first step to an eviction proceeding.

One approach is to call the landlord and explain your difficulties, emphasizing that they are only temporary. Then offer something less than the full month's rent, with a promise to catch up as the month proceeds, or at the first of the next month.

Landlords aren't legally required to accept less than the full month's rent. (*335 West 38th Street Cooperative Corp. v. Anchev*, NYLJ, 12/17/97, p. 21, col. 1 (App.Term, 1st Dep't).) But your landlord may make an exception if your financial problems truly appear to be temporary and you have a good record as an on-time tenant.

Chapter 15 examines your legal options and negotiation strategies if you receive a rent demand.

1. Written Agreements to Accept Delayed or Partial Rent

Your landlord may give you a little more time to pay some or all of the rent, so long as you establish a schedule, in writing, for when the rent will be paid. Good idea? Only if you can live up to the terms of the agreement. A signed agreement—say for a two-week extension—lets both you and the landlord know what's expected, and gives you some legal protection (and peace of mind) that the landlord won't change his mind and serve you with a three-day rent demand a few days later.

A model letter confirming your agreement for delayed or partial rent payments is shown below.

2. Making Partial Payment After a Rent Demand

If you offer partial payment after receiving a rent demand notice, the landlord isn't required to accept it. But keep in mind that a landlord may accept the partial payment and then serve a new rent demand on you for the new balance of rent due. Or, the landlord can refuse to accept the partial payment and begin a nonpayment eviction proceeding if you

don't pay up by the time provided in the rent demand notice.

H. Rent Increases

Once the rent is set, your landlord's freedom to raise the rent (or modify other terms of the tenancy) depends primarily on whether you have a lease or a month-to-month rental agreement. Read the section below that applies to your situation.



Rent control and rent stabilization laws limit a landlord's right to increase the rent. This section does not apply to rent-regulated tenants. Chapter 4 details permissible rent increases under New York State and New York City rent regulatory laws.

1. Tenants With Leases

The lease you signed for your rental unit fixes your rent, as well as other terms of your tenancy, for the duration of your lease term (usually a year). The landlord can't change any term of your tenancy until the lease expires unless the lease itself allows for the change or you agree to it. So unless you agree to a rent hike, or one is built into the lease, the landlord may not raise the rent (or change other terms) during the lease term.

When the lease runs out, however, the landlord may ask for a rent increase. There's no limit to how much the landlord can raise the rent, nor is any prior notice required.

2. Month-to-Month Tenancies

If you're a month-to-month tenant, you're vulnerable to arbitrary rent increases. Your landlord may legally raise the rent as much and as often as she pleases. But some month-to-month tenants are entitled to more notice than others. It depends on whether the rental agreement is oral or written.

If your rental agreement is oral, the landlord may simply tell you that he intends to raise the rent for the next monthly period. There's no prescribed amount of notice or requirement that the landlord give you a written rent increase notice. If you agree to the rent increase (or to any other change in term), you get to stay. (Lucky you!) If you don't agree to

Model Agreement for Delayed or Partial Rent Payments

This Agreement is made between Allison Morris
 "Tenant(s)," and James J. Cannon
 "Landlord/Manager."

1. Allison Morris "Tenant(s)" has/have
 paid one-half of her \$2,800 rent for Apt. 3B at 100 Water St., NY, NY

on March 1, 200X, which was due March 1, 200X.

2. James J. Cannon (Land-
 lord/Manager) agrees to accept all the remainder of the rent on or before
March 15, 200X, and to hold off on any legal proceeding to
 evict Allison Morris
 _____ (Tenant(s)) until that date.

3/2/0X James J. Cannon
 Date Landlord/Manager

3/2/0X Allison Morris
 Date Tenant

 Date Tenant

the rent hike (or other change), the landlord can terminate your tenancy on 30 days' notice within New York City and one month's notice outside New York City. Chapter 14 explains how month-to-month tenancies may be terminated.

If your rental agreement is in writing, the landlord may need to draw up a rider to your agreement in order to raise the monthly rent and security deposit (which is usually tied to the monthly rent). Written rental agreements typically contain a clause that requires all modifications of the agreement to be made in writing; if this is the case for you, the landlord must put the change in writing (the rider) and ask you to sign it. If you refuse to sign the rider, the landlord may end your tenancy with proper notice: 30 days' written notice in New York City and one month's oral or written notice outside New York City.

A Proposed Rent Increase Doesn't Have to Be a "Take It or Leave It" Proposition

Try to negotiate a lower rent increase than that proposed by your landlord. Here are some arguments that might help persuade the landlord to see things your way:

- "I'm a great tenant! I always pay the rent on time. I take good care of the apartment."
- "I rarely complain. If you insist on this big increase and force me to move, you may end up with a 'tenant-from-hell.'"
- "I can't afford this rent increase. If I move out, you'll likely end up spending more money advertising the unit for rent and screening rental applicants than you'll collect from me!"

While some landlords may refuse to negotiate, a smart landlord will usually listen to reason and meet you halfway. Besides, what do you have to lose?





Rent-Stabilization and Rent-Control Rules

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Special rent laws do not affect every New York tenant or every New York locality. But many cities, towns and villages with rental housing shortages have elected to opt in to a system of state-administered rent laws. Over one million rental units in 66 localities across the state, including New York City, Albany, Buffalo and White Plains, are subject to either “rent stabilization” or “rent control”—the two principal forms of “rent regulation” in New York. The vast majority are rent-stabilized.

Rent Law Terminology

When we use the term “rent regulated” in this chapter (and throughout the book), we’re referring to both types (rent stabilization and rent control). When the discussion pertains to only one of the two types of rent regulation, we identify that type specifically and indicate when we’re referring only to New York City or state regulations.

Rent regulations cap the amount of rent the landlord may charge for an apartment. As a result, the monthly rent for regulated apartments usually falls well below market rates. Rent laws cover much more than rent—they govern the way landlords must handle security deposits, establish the level of required services, entitle the tenant to sublet and assign and limit the circumstances under which the tenancy may be terminated.

Figuring out whether a specific apartment is rent regulated isn’t always easy. Hopefully, the landlord or the lease will tell you. But some landlords don’t understand how rent regulation works, or choose to ignore the laws and charge too much rent.

This chapter is essential reading for tenants whose current or future apartment is rent-stabilized or rent-controlled. It:

- identifies which apartments are covered by rent stabilization and rent control, which are exempt and how to find out if you’re not sure
- explains the various ways rents for rent-stabilized and rent-controlled apartments are set and increased

- discusses important tenant remedies such as the rent overcharge complaint
- covers senior citizen exemptions from rent increases
- reviews “luxury decontrol” rules for units which rent for more than \$2,000 per month, and
- provides a guide to rent regulation legal citations and information resources.



Trying to understand rent stabilization and rent control is a lot like trying to understand the Internal Revenue Code. While we’ve done our best to translate the rent laws and regulations into plain English, it’s natural to feel baffled and a bit daunted by the arcane web of laws and rules that follow. Hopefully, this chapter will help you understand the basics and show you where to find more detailed information when you need it.



Every chapter in this book discusses rules that affect rent-controlled and rent-stabilized units. Here are some of the main topics that specifically affect rent-regulated tenants:

- Understanding rent-stabilized leases, riders and renewal leases: Chapter 2
- Rules covering when, where and how rent is due, rent receipts, late fees and making partial or delayed rent payments: Chapter 3
- Security deposit limits: Chapter 5
- Apartment sharing and rules on how to pass rent-regulated units on to loved ones: Chapter 7
- Rent-regulated tenants’ right to privacy: Chapter 8
- Required and essential services and repairs: Chapter 9
- How to fight landlord discrimination, harassment and retaliation: Chapter 11
- Subletting and assignments, including special subletting rules for rent-stabilized units: Chapter 12
- Dealing with a landlord’s demand for overdue rent and nonpayment eviction suits: Chapter 15
- Responding to termination notices and holdover eviction proceedings: Chapter 16
- How occupants avoid eviction by attaining succession rights to rent-controlled and rent-stabilized units: Chapter 16
- How to research rent regulations and rules: Chapter 19.



Model Letters and Sample Forms in This Chapter

- Request For Access to Public Records
- Initial Registration Statement for Rent-Stabilized Units
- Annual Registration Statement for Rent-Stabilized Units
- Rent Overcharge Complaint Letter to Landlord

Act Promptly to Protect Your Rights

One of the biggest benefits of being a rent-regulated tenant is the legal limit placed on your landlord's ability to raise the rent. While landlords of non-regulated units may charge as much rent as the market will bear, landlords of rent-controlled and rent-stabilized units are prohibited from charging more than the legal, regulated rent. The law presumes that rent overcharges are willful, unless the landlord proves otherwise. There's a stiff triple damages penalty for willful rent overcharges, payable to the tenant. Sounds good, right? But here's the catch. If you don't promptly object to a rent overcharge, either by going to court or complaining to DHCR, you will be stuck paying the higher rent for the rest of your tenancy. For rent-stabilized tenants, rent overcharge claims and complaints must be filed within *four years* of the first overcharge claimed. (CPLR § 213-a; RSL § 26-516.) Rent-controlled tenants have just *two years* to act. (NYC Rent Control L. § 26-413(e)(2); 9 NYCRR § 2206.8; New York Emergency Housing Rent Control Law § 11(5).) Section H, below, explains how this time limit works and how rent-regulated tenants may make timely rent overcharge claims in court or with the DHCR.



Keep your rent records in a safe place. We can't overemphasize the importance of good record keeping for rent-regulated tenants. In order to challenge an unfair rent increase, win a rent overcharge claim or get a rent reduction for decreased services, you will be expected to document your claims and statements. (This chapter covers how to challenge various rent increases and make an overcharge claim. Chapter 9 covers rent reductions for decreased services.) So create a special file to hold your rent-stabilized lease and any renewals,

rent control notices, canceled rent checks, rent increase notices, registrations statements and DHCR orders.

A. Municipalities Subject to Rent Regulation

The counties, cities, towns and villages listed below have adopted some form of rent regulation. Not all units within these municipalities are subject to rent control or rent stabilization. Only those units in buildings that meet certain requirements are covered. We detail those requirements (and describe which units are exempt from rent regulation) in Sections C (rent control) and E (rent stabilization) of this chapter. Some buildings in New York City and Nassau, Rockland and Westchester Counties contain both rent-stabilized and rent-controlled units.

1. Localities Covered by New York City Rent Control

- Bronx County
- Kings County (Brooklyn)
- New York County (Manhattan)
- Queens County
- Richmond County (Staten Island).

2. Localities Covered by State Rent Control

- Albany County: Cities of Albany and Watervliet; Towns of Bethlehem, Green Island and New Scotland; Villages of Green Island and Voorheesville.
- Erie County: City of Buffalo; Town of Cheektowaga; Villages of Depew and Sloan.
- Nassau County: Cities of Glen Cove and Long Beach; Towns of Hempstead, North Hempstead and Oyster Bay; Villages of Blears, Cedarhurst, Floral Park, Flower Hill, Freeport, Hempstead, Lawrence, Mineola, New Hyde Park, Sea Cliff, Valley Stream, Westbury and Williston Park.
- Rensselaer County: City of Rensselaer; Towns of Hoosick and North Greenbush; Village of Hoosick Falls.
- Schenectady County: Towns of Niskayuna and Princeton.
- Westchester County: Cities of Mount Vernon, New Rochelle, White Plains, Yonkers; Towns

Where to Find the Law on Rent Stabilization and Rent Control

Throughout this chapter, we provide legal citations for key sections of rent stabilization and rent control laws and regulations. Here are the legal citations for the full text of these laws and regulations.

- **New York City Rent Stabilization Law:** The full text of the law can be found at § 26-501 of the *Administrative Code of the City of New York*. (NYC Admin. Code § 26-501 and following.)
- **New York City Rent Stabilization Regulations:** Officially titled the “New York City Rent Stabilization Code,” you may find these regulations at Volume 9 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*, beginning at § 2520.1. (9 NYCRR § 2520.1 and following.)
- **New York State (“ETPA”) Rent Stabilization Law:** Officially called the “Emergency Tenant Protection Act (“ETPA”) of 1974,” you can find this law in New York’s *Unconsolidated Laws*, beginning at § 8621. (NY Unconsol. § 8621 and following.)
- **New York State Rent Stabilization Regulations:** Officially called the “Emergency Tenant Protection Regulations,” they may be found at Volume 9 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*, starting at § 2500.1. (9 NYCRR § 2500.1 and following.)
- **New York City Rent Control Law:** Officially called the “New York City Rent and Rehabilitation Law,” you may find the full text of this law in the *Administrative Code of the City of New York*, beginning at § 26-401. (NYC Admin. Code § 26-401.)

- **New York City Rent Control Regulations:** Officially called the “New York City Rent and Eviction Regulations,” you may find these regulations in Volume 9 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*, beginning at § 2200.1. (NYCRR § 2200.1 and following.)
- **New York State Rent Control Law:** Officially called the “Emergency Housing Rent Control Law,” you may find the full text of this law in New York’s *Unconsolidated Laws*, beginning at § 8581. (NY Unconsol. § 8581 and following.)
- **New York State Rent Control Regulations:** Officially called the “State Rent and Eviction Regulations,” you can find these in Vol. 9 of the *Official Compilation of Codes, Rules and Regulations of the State of New York*, beginning at § 2100.1 (9 NYCRR § 2100.1 and following.)

You can find full copies of these laws and regulations in the reference section of most public libraries. The latest version of New York’s *Unconsolidated Laws* is available online at the New York Assembly’s website (<http://assembly.state.ny.us/ALIS/laws.html>). Current rent-stabilization regulations for New York City tenants may be found on the Tenant.Net website (www.tenant.net). Rent regulations for rent-controlled units and rent-stabilized units outside New York City are not currently online. Chapter 19, Section I, explains how to do your own legal research to further explore rent regulations and rules.

of Eastchester, Greenburgh, Harrison and Mamaroneck; Villages of Ardsley, Dobbs Ferry, Hastings-on-Hudson, Larchmont, Mamaroneck, North Tarrytown, Tarrytown and Tuckahoe.

3. Localities Covered by New York City Rent Stabilization

- Bronx County
- Kings County (Brooklyn)
- New York County (Manhattan)
- Queens County
- Richmond County (Staten Island).

4. Localities Covered by State (“ETPA”) Rent Stabilization

Rent-stabilization may continue in these municipalities only so long as there is a rental vacancy rate of less than 5% for the area.

- Nassau County: Cities of Glen Cove and Long Beach; Town of North Hempstead; Villages of Cedarhurst, Floral Park, Flower Hill, Freeport, Great Neck, Great Neck Plaza, Hempstead, Lynbrook, Mineola, Rockville Centre, Russell Gardens and Thomaston.
- Rockland County: Town of Haverstraw and Village of Spring Valley.
- Westchester County: Cities of Mount Vernon, New Rochelle, White Plains and Yonkers; Towns of Eastchester, Greenburgh, Harrison and Mamaroneck; Villages of Dobbs Ferry, Hastings-on-Hudson, Irvington, Larchmont, Mamaroneck, Mt. Kisco, Tarrytown, Pleasantville, Port Chester and Tarrytown.

B. How to Confirm If a Unit Is Rent-Stabilized or Rent-Controlled

 **If you know that your apartment is rent-controlled, skip to Section C. If you know that your apartment is rent-stabilized, skip to Section E, below, for important information about initial and annual registration statements.** And if you are the first rent-stabilized tenant to occupy an apartment that was formerly rent-controlled, see “Fair Market Rent Appeals for Newly Stabilized New York City Apartments,” in Section E, below.

If you have moved into a unit that your landlord claimed was free of regulation, but you suspect otherwise, what should you do? The best thing is to contact the New York State Division of Housing and Community Renewal (DHCR) for help. This state agency administers and enforces rent stabilization and rent control laws and regulations. See “DHCR Resource Guide” below for information on DHCR services and publications.

Start by asking the DHCR for a copy of the rent records pertaining to your apartment. The easiest way to do so is to call the DHCR InfoLine at 718-739-6400 and request a computer printout of the registration history for your apartment. This will show the status of the apartment (rent-controlled, rent-stabilized or exempt from regulation) along with the rent for your apartment as registered by the landlord within the past four years.

Alternatively, you can file a “Request for Access to Public Records” form (DHCR Form FOIL-1). The form comes with instructions and is easy to complete. A sample form is shown below. You can get this form by visiting your local DHCR office, calling the DHCR’s InfoLine, or downloading it from the DHCR’s website at www.dhcr.state.ny.us. Copies of records cost 25 cents a page.

If the DHCR says that the unit is not registered, you’ll need to do a little more legwork to determine for sure whether or not the unit is rent-stabilized or rent-controlled. Some units don’t appear on the DHCR’s registration rolls because they’re exempt from coverage. But others don’t appear because the landlord never bothered to properly register the unit. If the unit doesn’t fall into one of the rent-stabilization or rent-control exemptions listed in the following sections, you might consider talking with a landlord-tenant attorney who has experience with rent-regulatory issues to find out whether your unit should be covered by rent control or rent stabilization. Chapter 19 explains how to find legal assistance.



Check status of New York City buildings online.

The New York City Rent Guidelines Board (discussed in Section F, below) maintains a searchable database of building addresses grouped by borough and zip code. If your building is on the list, at least one rent-stabilized unit in the building was registered with the DHCR. The Board suggests verifying the information you obtain from the database with DHCR.



State of New York
Division of Housing and Community Renewal
 Office of Rent Administration

Reference Number:

Office use only.

Request For Access to Public Records

Please read instructions on the back of this application before completing the request form.
 Type or clearly print all information requested. This request must be dated and signed.
 Mail or deliver the original and all attachments to DHCR at the address listed above.

1. Mailing Address of Requester:

Subject Building:

Name _____ Address _____ (No. & Street)
 Address _____ Apt. No. _____ City, State & Zip Code _____
 City, State & Zip Code _____ Owner's/Managing Agent's Name _____
 Daytime Telephone No. () _____

2. Have you previously requested this specific information? ☐ Yes ☐ No

If "yes," enter previous reference number _____

3. I am the ☐ Owner ☐ Prospective buyer ☐ Managing Agent ☐ Subtenant
☐ Tenant Representative ☐ Owner Representative ☐ Tenant ☐ Other (specify): _____

If this information is needed for a court appearance, please give date and attach court papers. Court date: _____

Access may be denied on grounds stated in the Freedom Of Information Law; obtaining such access could be an unwarranted invasion of personal privacy. You must provide proof of identity. (See instructions on page 2.)

Only one category may be selected per request form, as the purpose of this form is to facilitate the processing of each category requested.

- 4. ☐ Copy of Order(s)**
 Docket/Order # (limit of four (4) per request form.)
 1. _____
 2. _____
 3. _____
 4. _____

- 5. ☐ Record Review - Case File**
☐ Docket/Order Number _____
☐ Copy of Entire File _____
☐ Copy of Specific Document _____

- 6. ☐ Record Review
 Rent Control Records Only:**
 Apartment Number(s) _____
☐ Registration Card
☐ MBR Profile
☐ Fuel Cost Adjustment

- 7. ☐ Rent Registration**
☐ Building-wide Rent Roll, (specify years) _____ (Rent Roll information can only be provided to the building owner; authorized representative of owner or authorized representative of all tenants in the subject building or anyone operating with the express consent of the foregoing.)
☐ Initial Building-wide Services Registration
☐ Individual Apartment(s) Rent History (specify years) _____ Apt. #'s. _____
☐ Initial Apartment Services Registration. Apt. #'s. _____
☐ Print-out of cases for subject building.

- 8. ☐ Status Request**
 Please provide an update on the status of the pending case.
 Docket Number(s) _____

Date: ____/____/____

Signature: _____

DHCR Resource Guide

The New York State Division of Housing and Community Renewal (DHCR), Office of Rent Administration, administers and enforces rent stabilization and rent control laws and regulations. While the DHCR doesn't publish a comprehensive guide for tenants, it does issue fact sheets and other publications that explain specific issues. The following publications, are available free to the public:

- *DHCR Fact Sheets* review the law, regulations and agency's policies on dozens of specific issues, such as rent increases for New York City rent-controlled tenants, vacancy rent increases for rent-stabilized tenants and luxury decontrol. Of all DHCR's publications, these are the most helpful. Appendix A lists all available DHCR Fact Sheets by fact sheet number and topic.
 - *DHCR Operational Bulletins* explain how the agency will implement various provisions of rent laws and regulations. Appendix A contains a chronological list of DHCR Operational Bulletins.
 - *DHCR Policy Statements* explain how the agency will interpret various provisions of the rent laws and regulations. Appendix A lists all DHCR Policy Statements issued to date in chronological order.
- *DHCR Forms*. The DHCR publishes dozens of official forms that tenants may use to access rent records relating to their apartments; file rent overcharge, service reduction and harassment complaints; fight rent increases and more. We include samples of some of the most useful ones in this book.
 - *DHCR Administrative Decisions*. The DHCR doesn't publish its own administrative decisions, but our friends at the tenant.net website have managed to obtain some of them to publish online. To access a searchable database of DHCR decisions from 1990-1994 go to www.tenant.net and click "NY DHCR Decisions." (Warning: Some of these decisions may not reflect current law or practices.)

For a specific DHCR publication or form, call the DHCR's InfoLine at 718-739-6400 (copies will be mailed to you) or visit your local DHCR office. For a listing of addresses and phone numbers for all DHCR offices located throughout the state, see Appendix A. Fact sheets, operational bulletins, policy statements and many official forms are also available on the DHCR's website at www.dhcr.state.ny.us.



C. Rent Control

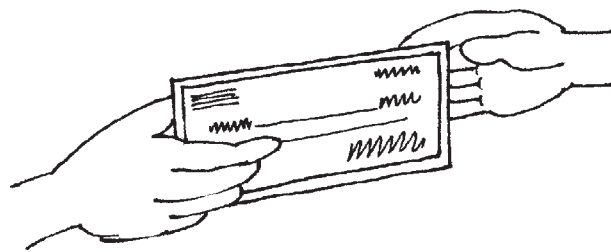
Rent control, which began after World War II, now affects only 96,000 units or so scattered around the state. Rent-controlled tenants seldom have a current lease for their units. They are often called “statutory tenants” since a rent-control statute, not a lease, entitles them to remain in occupancy at regulated rents (which are generally far lower than stabilized rents).

Rent control is in effect in New York City, Albany, Buffalo and other large cities, as well as many towns and villages (listed in Section A, above). Throughout this book, we’ll refer to the system of laws and regulations that affect rent-controlled units in New York City as “NYC Rent Control.” And we’ll call the separate system of laws and regulations that affect units outside New York City “State Rent Control.” The main difference between NYC and state rent control is the manner in which landlords must apply for operating cost rent increases. We detail both procedures in the following sections. In many instances, the rules relating to rent, services and eviction under both NYC and state rent control are the same. (Chapter 16 describes the limited grounds upon which a rent-controlled tenancy may be terminated.) When we use the general term “rent control,” we are referring to both New York City and state rent control laws and regulations.

1. Properties Covered by Rent Control

To be rent-controlled, a unit must meet all of the following four requirements:

- The premises must be located in an area where rent control is in effect.
- The premises must have been built *on or before* February 1, 1947.
- The unit must have been continuously occupied by the same tenant (or by the original tenant’s legal successor) since July 1, 1971, and
- It must be located in a building with three or more units. (NY Unconsol. § 8582.2; NYC Admin. Code § 26-403(e).) *Exception:* Units in buildings with fewer than three units are subject to rent control if they’ve been occupied by the same tenant (or the tenant’s legal successor) continuously since April 1, 1953.



2. Units Exempt From Rent Control

Some units which would otherwise be covered by rent control are actually exempt under special regulations. (9 NYCRR §§ 2100.9, 2100.10; 2200.2.) Exempt units include those that are:

- government-operated and subsidized
- hotel rooms (not rooming houses)
- in charitable and educational nonprofit institutions, such as hospitals, convents, monasteries, asylums, colleges and dormitories
- in summer resorts or vacation rentals
- in nonprofit clubs, such as college fraternity or sorority houses
- occupied by farming tenants, and
- occupied by service employees, such as building superintendents, property managers, caretakers or janitors, who receive housing as part or all of their compensation.

Units that are exempt from rent control may, nevertheless, be covered by rent-stabilization. We discuss which units are subject to rent stabilization in Section E, below. If you have any question whether your unit is rent-controlled, check with the DHCR or with an experienced landlord-tenant attorney.

3. Registration Statements for Rent-Controlled Units

Back in the 1950’s, state law required most landlords to file registration statements for their rent-controlled units with their local housing authority. (9 NYCRR. §§ 2103.1, 2103.2, 2103.9.) In 1984, New York City law required landlords to file new registration statements with the state DHCR for those rent-controlled units in buildings with rent-stabilized units. Chances

are your landlord (or a prior owner) complied with the registration requirements years ago. Unlike rent-stabilized units (discussed in Section E, below), which must be registered with the DHCR annually, there's no ongoing registration requirement for rent-controlled units. So don't expect to get an annual registration statement from your landlord, as rent-stabilized tenants do.

4. How to Get Key Information About Rent and Essential Services for Your Rent-Controlled Apartment

You may seek information concerning the maximum collectible rent for your rent-controlled apartment by filing a "Request for Calculation of Maximum Collectible Rent (Rent Control Only)" (DHCR Form RA-1 (2/96)) with DHCR. The form is available by calling the DHCR's InfoLine (718-739-6400). It's easy to complete and may be filed with DHCR by regular mail. Upon receipt, the agency will review registration and other records for your apartment and mail the requested information to you.

To find out what services your landlord is supposed to be providing to your rental unit, complete the DHCR "Request for Access to Public Records," discussed in Section B, above. Check the "Registration Card" box on this form to obtain information on essential or base-date services for your rent-controlled apartment.

5. How Rent-Controlled Apartments Become De-Controlled

When a rent-controlled tenant dies or moves out, the unit becomes "de-controlled" and is no longer subject to rent control, unless a qualified tenant-successor remains in occupancy. (We discuss succession to rent-regulated apartments in Chapter 7.) But if that apartment is in a building built before January 1, 1974, that contains six or more units, it becomes rent stabilized. (*Exception:* If the apartment is in a building converted to co-ops or condos, the unit does not become rent-stabilized; it becomes deregulated.)

D. Operating Cost Rent Increases for Rent-Controlled Apartments

There are three main ways your landlord may increase rent for a rent-controlled unit:

1. Apply for a rent increase based on increased operating costs. NYC landlords may also apply for a rent increase based on fuel costs. Rules for rent-controlled apartments in and outside of NYC are discussed in this section.
2. Make improvements to the unit with your consent (covered in Section I, below).
3. Complete a building-wide major capital improvement to the premises (discussed in Section J, below).



A landlord may insist that you increase your security deposit by an amount equal to any permanent lawful monthly rent increases. Chapter 5 discusses security deposits.

A landlord may also charge more for a rent-controlled apartment if you take on a roommate. Your landlord is entitled to apply for a rent increase if you share your apartment with an additional occupant who is not a member of your immediate family. See Chapter 7, Section E, for details.

In New York City, you may also be required to pay a "fuel cost rent adjustment" in addition to rent, as explained below. Because this is not a permanent rent increase, your landlord may not demand a corresponding increase in your security deposit.

1. Operating Cost Rent Increases Under the NYC Rent Control "MBR" System

Rent control in New York City operates under the Maximum Base Rent (MBR) system. (NYC Local L. 73 of 1997.) Under this complex system, an MBR rent is established for your rent-controlled unit. Every two years, the DHCR determines how much your landlord can increase the MBR during that two-year cycle. DHCR calls this the "MBR factor" and is expressed as a percentage. The percentage amount is based on the DHCR's assessment of what it costs landlords to operate their buildings, and is supposed to allow enough for a reasonable profit. The MBR factor for the 2002/2003 cycle was 10.5%.

The rent you actually pay is called the Maximum Collectible Rent (MCR) and is generally lower than the MBR. Landlords are entitled to annual increases in the MCR of up to 7.5% (or a lower percentage if the applicable MBR factor is less than 7.5%), until the unit's MCR reaches the MBR. (See 9 NYCRR § 2201.6.)

EXAMPLE: The DHCR set the MBR factor for rent-controlled apartments at 10.5% for the 2002-2003 cycle. On December 31, 2001, Jayne's MCR (the rent she actually paid) was \$800 per month. Jayne's MBR was \$900. As of January 1, 2002, the first day of the new rent increase cycle, Jayne's MCR rises 7.5% from \$800 to \$860 per month and her MBR rises 10.5 % (the total MBR factor) from \$900 to \$994.50. As of January 1, 2003, Jayne's MCR rises another 7.5% from \$860 to \$924.50 and her MBR stays the same, since MBR increases cover a two-year period.

A landlord can't just take the rent increase DHCR orders for that two-year cycle. Your landlord must apply for and get a DHCR "Order of Eligibility." DHCR won't let the landlord increase the rent if there are serious code violations at your building. The landlord is required to certify that he has cleared, corrected or abated all "rent-impairing" violations issued against your building as of the previous January 1, and at least 80% of all non-rent-impairing violations. (Chapter 9 discusses tenant rights if a landlord has not corrected rent-impairing violations.) In addition, the DHCR will not grant a rent increase unless the landlord certifies (swears as real) her operating expenditures and that she is maintaining all essential services.

If the landlord is granted an Order of Eligibility, you can expect to receive a "Notice of Increase in MBR and MCR Computation" (DHCR Form RN-26). It must be signed by your landlord and delivered to you within 60 days after the date the Order of Eligibility is issued by DHCR.



Your rent can go up more than 7.5% per year if you have consented to an "Individual Apartment Improvement" rent increase (see Section I, below), or if the landlord is eligible for a "Major Capital Improvement" rent increase (see Section J, below).

a. How to Fight a Maximum Base Rent (MBR) Increase

Upon receipt of the Notice of Increase in MBR and MCR Computation, tenants have a right to challenge the rent increase on one or more of the following grounds:

1. The landlord has failed to provide "essential" services. These are building-wide and individual apartment services furnished, or required to be

furnished, as of March 1, 1943. Essential services (called "base-date services") also include any services ordered by the DHCR after 1943, with any corresponding rent increase. Examples include heat, hot water, elevator service and apartment equipment like a refrigerator or stove. Section C4, above, explains how to find out what services your landlord is supposed to be supplying to your rental unit. For more information on essential services, check out DHCR Fact Sheet #3, "Required and Essential Services." It's available at all DHCR offices, from the agency's website (www.dhcr.state.ny.us) or by calling the DHCR's InfoLine at 718-739-6400. Also, see Chapter 9, Section M, on how to apply to DHCR for a rent reduction if your landlord has refused to provide essential services.

2. The building has serious code violations that affect habitability. These are sometimes known as "rent-impairing" violations. (Chapter 9 has more on rent-impairing violations.) To obtain a violation search for your building, call or visit the New York City Housing Preservation and Development (HPD) Office of Code Enforcement in your borough (Appendix A has addresses and phone numbers). You can also access and download a list of open violations for your building from HPDOnline (www.nyc.gov/html/hpd).
3. The landlord's expenses don't justify the rent increase. The New York City Rent Guidelines Board maintains detailed cost data on local housing costs and expenses for New York City landlords. The research may be viewed or downloaded from the Board's website at www.housingnyc.com.

To challenge the Maximum Base Rent Order, file a "Challenge Re: Maximum Base Rent Order" (DHCR Form RA-94 MBR) with DHCR. Any challenges to the Order of Eligibility must be filed within 33 days of the date the order was issued. The DHCR usually takes at least several months to process and decide these challenges. In the meantime, the tenant must pay the rent increase.

b. New York City "Fuel Cost Rent Adjustment"

New York City law permits landlords to adjust a rent-controlled tenant's rent based on the changes, up or down, in the prices of heating fuels. (NYC Admin. Code § 26-405(n).) The rent adjustment is based on fuel price changes between the beginning

and end of the prior year. The fuel cost adjustment may not be incorporated in the rent on which maximum base rent increases are computed. This type of rent increase applies *only* to NYC rent-controlled units.

The rent adjustment is based on the quantity of fuel delivered to your building during the previous year, divided by the number of rooms (not units) in the building, up to an annual maximum consumption standard per room set by DHCR for the type of fuel used. This figure is then multiplied by the price change, divided by 12 months and multiplied by 75%. Seventy-five percent of the annual fuel cost per room is passed along to you.

To be eligible for the rent adjustment, your landlord must certify that:

- heat, hot water and other essential services are being maintained, and
- for units that were the subject of a rent reduction ordered by the DHCR due to the landlord's failure to provide essential services, at least a year has passed since the DHCR has restored those rents.

Buildings that have not qualified for maximum base rent increases may nevertheless be eligible for fuel cost adjustments.

To obtain the adjustment, the owner must complete, certify and deliver to each rent-controlled tenant a copy of DHCR's "Owner's Report, Certification, and Notice of Fuel Cost Adjustment Eligibility" (DHCR Form RA-33.10). The landlord may collect the rent adjustment only when the tenant and DHCR are served with the completed report forms and schedules. No prior DHCR order is required.

Review the Owner's Report carefully. Tenants have the right to challenge any errors, omissions or misrepresentations on the Report (or any attachments) directly with the landlord. If you've tried but can't resolve the problem with the landlord, you may, within 33 days after receipt of the Report, file a "Tenant's Challenge to Landlord's Report and Certification of Fuel Cost Adjustment and Eligibility" (DHCR Form RAC-2202.13). If the DHCR finds that the landlord falsified any information on the Report, the landlord must refund all fuel cost increases collected during the prior two years and becomes ineligible for future increases during the next two-year period.

When the cost of fuel decreases, the owner must file a report and pass the decrease on to the tenants. Failure to serve the tenants and DHCR within 60 days

after the fuel consumption and price change standards are released by DHCR will result in the suspension and revocation of all previous fuel increases for a period of 12 months.

For more information, or to obtain the challenge form, call the DHCR InfoLine at 718-739-6400 or visit the agency's website (www.dhcr.state.ny.us).

2. Operating Cost Rent Increases for State Rent-Controlled Units

Maximum monthly rents for rent-controlled units outside New York City may be periodically adjusted up to a percentage set by the DHCR. (9 NYCRR § 2102.3.) As of mid-2002, landlords can apply for rent increases of up to 9½% every two years. To qualify, your landlord must be prepared to prove that there has been a "significant and unavoidable" increase in operating costs such as real estate taxes, heating fuel, utility charges, repairs, replacements or labor, with no corresponding rent increase for the same two-year period.

If you receive an "Owner's Sixty-Day Notice of Maximum Rent Adjustment" (DHCR Form R-33.8), it means that your landlord is seeking a rent increase. The landlord must deliver the original notice and one copy to you by personal delivery or certified mail at least 60 days before the proposed rent increase.

State rent-controlled tenants must stay on their toes to fight a proposed rent increase. You only have seven days after receiving an Owner's Sixty-Day Notice of Maximum Rent Adjustment to challenge a rent increase.

To do so, complete Part B ("Tenant Response to Owner") of the Owner's Sixty-Day Notice with specific questions or objections. You may challenge the rent increase on one or more of the following grounds:

- The landlord has not owned the building for the last two years.
- The rent has been increased during the prior two-year period.
- The landlord has failed to maintain all essential services (also called base-date services). An "essential service" is any service that was furnished or required to be furnished to your apartment on May 1, 1950 (including any increased services ordered by DHCR thereafter, with a corresponding rent increase). Examples include repairs, light, heat, hot and cold water,

elevator service, kitchen and bath facilities, janitor service, refuse removal, a refrigerator, stove, air conditioning equipment or painting. For more information on essential services, check out DHCR Fact Sheet #3, “Required and Essential Services.” It’s available at all DHCR offices, from the agency’s website (www.dhcr.state.ny.us) or by calling the DHCR’s InfoLine at 718-739-6400. Also, see Chapter 9, Section M, on how to apply to DHCR for a rent reduction if your landlord has refused to provide essential services.

- There are outstanding municipal, county, state or federal violations in effect regarding building services.
- The rent increase isn’t justified by the actual increase in operating costs for the building in the preceding two-year period. DHCR will consider costs relating to real estate taxes, heating fuel, utility charges, repairs, replacements and labor. Your landlord doesn’t need to supply any records of increased costs to the DHCR unless you question the landlord’s operating costs.

Send your response to the landlord as soon as possible in order to meet the seven-day deadline. Be sure to get proof from the post office that you mailed it. Upon receipt of your objection, the landlord gets seven days to rebut your objections. If you think that the landlord’s response is unsatisfactory (or if it doesn’t arrive in seven days), complete and sign Part C (“Tenant Complaint to DHCR”) of the Owner’s Sixty-Day Notice and deliver or mail it to DHCR.

To decide your challenge, the DHCR may request copies of the landlord’s records with respect to operating expenses, violations and repairs for the preceding two-year period. After review, the DHCR will affirm, reduce or cancel the rent increase and, where appropriate, order the landlord to refund any overpayments to you.

E. Rent Stabilization

Rent stabilization, which first began in 1969, now affects over one million apartments in New York City and in the suburban counties of Nassau, Rockland and Westchester. Tenants who move into vacant rent-stabilized apartments are entitled to one- or two-year “vacancy” leases at regulated rents and are

generally entitled to “renewal” leases for successive one- or two-year terms. When a rent-stabilized tenant moves out, the apartment remains subject to rent stabilization, so long as the regulated rent stays below \$2,000 per month. That means that the next incoming tenant will also be entitled to the benefits and protections of rent stabilization.

Throughout this book, we refer to the law and regulations that affect rent-stabilized units in New York City as “NYC Rent Stabilization.” And we call the separate system of laws and regulations that affect units outside New York City as “State (Emergency Tenant Protection Act or ETPA) Rent Stabilization.” When we use the general term “rent stabilization,” we are referring to both New York City and state (ETPA) rent stabilization. We explain each type of rent stabilization in the sections that follow.

1. NYC Rent Stabilization

Within New York City, there are three categories of units that are covered by rent stabilization:

- Units in buildings with six or more units built between February 1, 1947, and January 1, 1974. (NYC Admin. Code § 26-504(a)(1).)
- Units in buildings with six or more units built before February 1, 1947, and occupied by tenants who moved in after June 30, 1971. (NYC Admin. Code § 26-504(b)), and
- Units in buildings with three or more units constructed or extensively renovated since 1974 under real property tax benefit programs that mandate rent stabilization during the term of the tax abatement or exemption (NYC Admin. Code § 26-504(c)(1)); these include the “421-a” new construction program, the “423” redevelopment program and the “J-51” rehabilitation program. Generally, these buildings are subject to rent stabilization only while the tax benefits continue, or in some cases, until the tenant vacates. (NYC Admin. Code 26-504.) For more information on these property tax benefit programs, contact:

The New York City Department of Housing
Preservation and Development Office of Tax
Incentive Programs
100 Gold Street, Room 1G-3
New York, NY 10038
Tel. 212-863-5876
www.nyc.gov/hpd

If your apartment falls into one of the above categories, it should be rent-stabilized, unless it falls into one of the exemptions from rent stabilization listed in Section 3, below.

2. State (ETPA) Rent Stabilization

Outside New York City, state rent stabilization (also known as the Emergency Protection Tenant Act or ETPA) applies to units in buildings that meet each of the following three requirements:

- The unit is located in a community in Nassau, Rockland or Westchester counties that has adopted rent stabilization (see the list in Section A, above).
- The unit was built before 1974, and
- The building in which the unit is located contains at least six units. Some municipalities limit coverage to buildings of a specific size—for instance, buildings with 20 or more units—but ETPA is never applicable to buildings with fewer than six units. (9 NYCRR § 2500.8.)

State rent stabilization also covers units that were formerly rent-controlled and vacated on or after June 30, 1971 (“decontrolled units”). (NY Unconsol. § 8623(a).)

If your apartment falls into one of the above categories, it should be rent-stabilized, unless it falls into one of the exemptions from rent-stabilization listed in Section 3, below.

3. Units Exempt From Rent Stabilization

There are a number of statewide exemptions to rent stabilization. (9 NYCRR §§ 2500.9, 2520.11.) These include units that are:

- rent-controlled (see Section C, above)
- in buildings newly constructed or substantially rehabilitated after December 31, 1973
- owned, operated or leased by charitable and educational institutions on a nonprofit basis (such as hospitals, monasteries or school dormitories), so long as they are occupied by tenants who were affiliated with the institution when they moved in
- in cooperatives and condominiums (except those still occupied by rent-stabilized tenants who elected not to purchase their units when

the building was converted to cooperative or condominium ownership)

- not occupied as a tenant’s “primary residence” (that is, occupied fewer than 183 days per year, as explained in Chapter 16, Section F)
- used exclusively for professional, commercial or other non-residential purposes
- deregulated under so-called “luxury decontrol” laws (explained in Section L, below), and
- currently occupied by servants, superintendents, janitors, managers or other employees to whom the unit is provided rent-free, as all or part of the employee’s compensation.

4. Initial and Annual Registration Statements for Rent-Stabilized Units

Each year, state law requires landlords of rent-stabilized apartments to file a registration statement with DHCR, listing the rent paid and services provided to the tenant, and to provide tenants with a copy of this registration statement. (NY Unconsol. § 8632(a).) If there’s more than one rent-stabilized tenant named on your lease for the unit, your landlord need serve only one of you with the initial or annual registration form.



Keep registration statements and postmarked envelopes for the term of your tenancy.

File your registration information with your lease and other important papers. You may need it as evidence of a rent overcharge or service reduction if you ever file a complaint with DHCR or are involved in a lawsuit against your landlord.

a. Initial Registration Statement

If you are the first rent-stabilized tenant to occupy a New York City apartment, your landlord must file a so-called “initial registration” of the rent, services and room count within 90 days after you take occupancy. (9 NYCRR §§ 2509.1(c), 2528.1.) Your landlord must provide you with a copy of the DHCR “Initial Apartment Registration” (Form RR-1) by certified mail, return receipt requested. New York City tenants may challenge the initial market rent. For details, see “Fair Market Rent Appeals for Newly Stabilized New York City Apartments,” below. A sample initial registration form is shown below.



STATE OF NEW YORK • DIVISION OF HOUSING AND COMMUNITY RENEWAL

Processing Services Unit, Hampton Plaza, 38-40 State St., Albany, NY 12207

DHCR website: www.dhcr.state.ny.us

INITIAL APARTMENT REGISTRATION

USE THIS
FORM TO
REPORT:

Initial Registration:

- A. The Apartment is in a building which has never been previously registered with DHCR. (See Item 16.A)
 B. The Apartment was vacant at the time the building was initially registered with DHCR. (See Item 16.A)
 C. The Apartment is being registered for the first time as Rent Stabilized after being registered previously with DHCR as rent controlled or exempt.

THIS FORM MUST BE ACCOMPANIED BY A REGISTRATION SUMMARY Form RR-2(I), PLUS, IF THE BUILDING IS BEING REGISTERED FOR THE FIRST TIME, A BUILDING SERVICES SUMMARY Form RR-3(I).

IMPORTANT: ALL INFORMATION ENTERED ON THIS FORM MUST BE VALID FOR THE DATE THIS APARTMENT BECAME SUBJECT TO THE OMNIBUS HOUSING ACT OF 1983. (This is the date you enter in Item 1 below.)

1. Date apartment became subject to the Omnibus Housing Act of 1983 Mo / Day / Yr		2. Date of this Initial Registration Mo / Day / Yr		14. Legal Regulated Rent On Date in Item 1. \$ _____ per ☐ Month ☐ Week	
3. Building ID Number _____ ☐ MDR ☐ ETPA ☐ HOTEL				15a. Actual Rent Paid on Date in Item 1. (If Different Than Legal Regulated Rent) \$ _____ per ☐ Month ☐ Week	
4. Street Address				15b. Reason: ☐ DHCR Rent Reduction Order ☐ Sec 8 ☐ Preferential Rent ☐ Sr. Citizen Rent (SCRIE) ☐ Other (specify) _____	
5. City, Town or Village NY		6. Zip Code		16. Initial Apartment Registration	
7. County	8. Apt. No. or Location	9. Total No. of Rms. in Apt.		A. Reason for Initial Registration (check one) ☐ New Constr. ☐ Major Rehab. ☐ Late Regis. ☐ Apt. Vacant at Time of Previous Initial Bldg. Reg. ☐ Apt. Previously Rent Controlled	
10. Tenant Name(s) (Last) (First) (MI)				Rent \$ _____ MCR \$ _____ MBR \$ _____ Date Rent Controlled Tenant Vacated: ____/____/____ Mo Day Yr	
11. Lease Dates in effect on Date in Item 1. Began On ____/____/____ Expired On ____/____/____ Mo Day Yr Mo Day Yr				☐ Apt. Previously under Mitchell-Lama ☐ Other (specify): _____	
12. Equipment and services included in rent (shown with an "X") ☐ Stove ☐ Refrigerator ☐ Dishwasher ☐ Blinds/Shades ☐ Furniture ☐ Room A/C No.: _____ ☐ Maid Service ☐ Linen Service ☐ Other (specify): _____				B. Apartment Status (check one): ☐ Rent Control ☐ STAB/ETPA ☐ Vacant but Previously Rent Stabilized ☐ Exempt (for following reason - check one): ☐ Commercial/Professional ☐ Owner Occ./Employee ☐ Not Prime Res./Not-For-Profit ☐ High-Rent, Vacancy Deregulation ☐ Co-op/Condo Occupied by Owner or Non-Protected Tenant	
13. Equipment and services for which a separate charge is collected by owner (shown with an "X") A/C ☐ Electricity ☐ Service ☐ Service Maid ☐ Service ☐ Service Linen ☐ Service Master ☐ TV Antenna ☐ Furniture ☐ Recreational Facilities ☐ Garage/Parking \$ _____ Per month each car Separate Lease From ____/____/____ to ____/____/____ Mo Day Yr Mo Day Yr ☐ Other (specify) _____				Expiration of: ☐ Sec. 11-243 or 11-244 (J51) ☐ Sec. 608 ☐ Sec. 421-A	
17. Owner/Managing Agent Name ☐ Owner ☐ Managing Agent ☐ Coop/Condo Owner				(If unit is coop/condo, enter information for unit owner. In all other cases, enter information for building owner or building managing agent.)	
Street		Apt/Room			
City, Town or Village		State Zip Code			

RR-1 (I) (2/02) INTERNET

Copy 1 DHCR

Copy 2 OWNER

Copy 3 TENANT SAVE FOR YOUR RECORDS
Important tenant information attached.

b. Annual Registration Statements

Each year after the initial registration is filed, your landlord must file an “annual registration” updating the registration information for your apartment. (9 NYCRR § 2509.2, § 2528.3.) You must be served with the tenant’s copy of the DHCR “Annual Apartment Registration 200x” (Form RR-2A) by July 31, with one exception: If you moved in after April 1, the landlord doesn’t need to deliver the registration form to you. It goes to the prior tenant (who lived in the unit on April 1). A sample annual registration form appears below.

c. Importance of Checking the Registration Statement

When you get the registration form, check to make sure that all information pertaining to your apartment is accurate. If the form lists a monthly rent that is less than the amount of rent you actually pay, discuss the discrepancy with the landlord. If the landlord does not correct the registration statement or issue a rent adjustment in your favor, file a rent overcharge complaint against the landlord in court or with the DHCR (Section H, below, discusses rent overcharges). Similarly, bring to your landlord’s attention any services that are not included in your rental unit—both required services or equipment listed on the initial registration form (also called base-date services) and any services listed on the annual registration statement. If the matter cannot be resolved, you may file a services complaint with DHCR (Chapter 9, Section M, explains how). If the DHCR finds that the landlord is not supplying required services, you are entitled to a rent reduction until services are restored and the DHCR issues a rent restoration order.



Don’t presume that the registered rent is the lawful rent for the apartment.

Some tenants mistakenly believe that the term “registered rent” means the same thing as the “legal regulated rent.” Landlords generate the information that appears on the registration statement, not the DHCR. Some landlords make honest mistakes when computing rent, while others intentionally rent gouge. If you believe that the landlord has registered a rent that is higher than the legal regulated rent, consider filing a rent overcharge complaint in court with the DHCR. Section H, below, discusses rent overcharges. Keep in mind that if you don’t challenge a registered rent within four years, you give up the right to do so.

F. Rent-Stabilized Apartment “Vacancy” Rents

When you first move into a rent-stabilized apartment, you’re entitled to an initial “vacancy” lease for a term of one- or two-years, at your option. When that lease ends, you’re entitled to successive “renewal” leases for another one- or two- year term. Chapter 2 discusses rent-stabilized vacancy leases, renewal leases and required riders.

The maximum monthly rent payable under a vacancy lease is set by taking the rent paid by the prior tenant for the same unit, and adding (a hefty) “vacancy” rent hike, pursuant to state law. The Manhattan rental market is perpetually tight, so you can expect the landlord to set the rent as high as is legally possible—especially in buildings south of 96th Street. In the outer boroughs and suburban counties, the landlord may elect to set a lower rent, depending on local market conditions.

The maximum rent hike is made up of four components:

1. “Vacancy Increase”
2. “Vacancy Bonus”
3. “Low-Rent Apartment Bonus,” and
4. “Rent Guidelines Board Vacancy Allowance,” if any.

This section covers the details on each component and describes how the rent that is listed on your vacancy lease is set. Other sections in this chapter look at other rent increases a landlord may charge rent-stabilized tenants, when improvements are made in the unit (Section I) or the building (Section J). Section G, below, looks at how renewal lease rent increases are calculated.

1. Vacancy Increase

The “vacancy increase” was established by the 1997 Rent Regulation Reform Act. (NYC Admin. Code § 26-511(c) (5-a); ETPA ch. 576 §§ 44, 10(a-1).) The size of the increase depends on the length of the lease you’re signing (either one or two years).

For a two-year vacancy lease, the vacancy increase is a 20% rent hike. For a one-year vacancy lease, the vacancy bonus is a 20% increase *minus* the difference between rates set by the Rent Guidelines Board for two- and one-year renewal rent increases.



STATE OF NEW YORK • DIVISION OF HOUSING AND COMMUNITY RENEWAL
Processing Services Unit, Hampton Plaza, 38-40 State St., Albany, NY 12207

DHCR website: www.dhcr.state.ny.us

ANNUAL APARTMENT REGISTRATION • 2002

NOTICE: IMPORTANT TENANT INFORMATION ON OTHER SIDE OF FORM

1. Building ID Number _____	7a. If this Apartment is temporarily exempt, indicate the reason below: ☐ Transient Occupancy in Hotel/SRO ☐ Other ☐ Owner Occupied/Employee ☐ Commercial/Professional (no c/o) ☐ Not Prime Residence/Not -for-Profit	
2. Tenant in occupancy on 4/1/2002: Vacant ☐ Last First M.I. ☐ Tenant succeeded to apartment after 6/19/1997.	7b. If this Apartment became permanently exempt since 2001 Registration, indicate effective date and reason below: Effective Date of Exemption: ____/____/____ Mo / Day / Yr ☐ High Rent Vacancy indicate Last Legal Regulated Rent \$ _____ per ☐ Month ☐ Week ☐ High Rent/High Income (DHCR has issued a final order exempting apartment) ☐ Commercial/Professional (with c/o) ☐ Co-op/Condo Occupied by Owner or Non-Protected Tenant ☐ Substantial Bldg. Rehabilitation ☐ Other (specify) _____ Qualifying Expiration of: ☐ Sec. 11-243 or 11-244 (J-51) ☐ Sec. 608 ☐ Sec. 421-A	
3. Street _____	8. Legal Regulated Rent On 4/1/2002 \$ _____ per ☐ Month ☐ Week	
4. Apt. _____	9a. If different from Legal Regulated Rent, enter Actual Rent Paid on 4/1/2002 \$ _____ per ☐ Month ☐ Week	
5. City, Town or Village NY 6. Zip Code (plus 4) _____	9b. Reason: ☐ Sr. Citizen Rent (SCRIE) ☐ DHCR Rent Reduction Order ☐ Section 8 ☐ Preferential Rent ☐ Other (specify): _____	
10. Lease in effect on 4/1/2002 ☐ None Began On ____/____/____ Expires On ____/____/____ Mo / Day / Yr Mo / Day / Yr	11. Rent has changed since 2001 registration due to: (check one or more) ☐ Second Succession ☐ Lease Renewal ☐ Vacancy Lease ☐ 421-A (2.2%)	
12. Rent changes since 2001 registration due to DHCR rent adjustment order(s) (check one or more) ☐ Major Capital Improvement ☐ Hardship ☐ Fair Market Rent Appeal ☐ Rent Overcharge		
13. Rent changes since 2001 Registration instituted <u>without</u> DHCR order (specify as many as apply)		
Effective Date (Mo / Yr)	Monthly Rent Increase	Reason for Increase (Check each improvement made in apartment)
____/____	\$ _____	☐ Stove ☐ Refrigerator ☐ Dishwasher ☐ A/C ☐ Windows ☐ Other _____
____/____	\$ _____	☐ Stove ☐ Refrigerator ☐ Dishwasher ☐ A/C ☐ Windows ☐ Other _____
14. Owner/Managing Agent (check one) ☐ Owner ☐ Managing Agent ☐ Co-op/Condo Owner Last Name First Name M.I.		
Street _____		Apt/Room _____
City, Town or Village _____		State _____ Zip Code _____

PARA INFORMACION EN ESPANOL, VEA RESPALDO DE ESTA FORMA.

Copy 1 DHCR

Copy 2 OWNER

Copy 3 TENANT Save for your records

RR-2A (2002) (2/02) INTERNET

Fair Market Rent Appeals for Newly Stabilized New York City Apartments

A rent-controlled apartment becomes “vacancy decontrolled” when the tenant moves out or passes away, without leaving behind any occupants who qualify as tenant-successors. (NY Unconsol. § 8623(a).) (Chapter 7 discusses how occupants qualify for succession rights to rent-regulated apartments.) The term decontrolled means that the unit is no longer subject to rent-control laws. But if that apartment is in a building built before January 1, 1974, that contains six or more units, it becomes rent stabilized.

If you are the first rent-stabilized tenant in such a unit, the landlord may negotiate a “free market” rent with you. Then, within 90 days after you move in, your landlord must file an “Initial Apartment Registration” (Form RR-1) with DHCR and send you a copy by certified mail. While the rent for newly stabilized units may be based on market rents, New York City tenants nevertheless have a right to file a Fair Market Rent Appeal (FMRA) to challenge that market rent as being unfairly higher than the prior rent-controlled rent.

To file a Fair Market Rent Appeal, file a “Tenant’s Complaint of Rent and/or Other Specific Overcharges in Rent-Stabilized Apartments” (DHCR Form RA-89), discussed in Section H, below. On question No. 15 of this form, clearly state that your complaint is both a complaint of “overcharge” and “Fair Market Rent Appeal.” You must file your appeal within 90 days after you receive your copy of the initial apartment registration. If you challenge the initial legal registered rent within this time period and the rent is found to be excessive, DHCR will adjust and set a new legal regulated rent for the apartment.

The formula used by DHCR for determining FMRAs is complicated. The agency averages the greater of the maximum collectible rent or maximum base rent under rent control as adjusted by “Special Guidelines” set by determining Fair Market Rent Appeals. The special guidelines are issued each year by the NYC Rent Guidelines Board, with the rents of qualifying comparable apartments, updated if appropriate. Once the average rent figure is calculated, an adjustment is added for any new equipment installed in the apartment. (RSC § 2522.3.) Because rent-controlled rents are usually far below market rents, tenants who file Fair Market Rent Appeals are often entitled to rent reductions.

If you win your Fair Market Rent Appeal and the legal rent is established at an amount lower than what you’ve been paying, the DHCR usually directs the landlord to refund any excess rent to you in cash, check or money order. The landlord may, however, credit the refund against future rents over a period of up to six months. If the required refund is greater than six months’ rent, you have the option of continuing crediting the refund against future rents until the refund is fully credited. Or, you may ask the owner to refund any balance outstanding at the end of the six-month period.

If your FMRA is denied or if you don’t file an appeal within the 90-day period, then the negotiated initial legal registered rent becomes the lawful rent, not subject to challenge. All future rent increases, whether for a renewal or vacancy lease, are based on the initial rent.

For instance, NYC Rent Guidelines Order #34, which covers leases that begin between October 1, 2002, and September 30, 2003, authorized rent increases of 2% for one-year renewal leases and 4% for two-year leases. Since the difference between the rates set for one- and two-year renewal leases is 2% ($4\% - 2\%$), the rent hike for a one-year vacancy lease signed between 10/1/02 and 9/30/03 was 18% ($20\% - 2\%$).

2. Vacancy Bonus

In addition to the vacancy increase, your landlord can collect a vacancy bonus if he hasn't taken an increase on the unit for the prior eight years. To figure out how much of a bonus may be added, the number of years since the landlord last took a vacancy increase is multiplied by .006 of the rent charged to the last tenant.

EXAMPLE: After a ten-year tenancy, Mrs. Hecht, the prior tenant, moved out of the studio apartment you plan to rent in Queens. Mrs. Hecht's last monthly rent was \$1,200. Because the landlord didn't take a vacancy rent increase on the unit in over eight years (he'd only been allowed to take renewal rent increases during Mrs. Hecht's tenancy), the landlord is entitled to a "vacancy bonus." To calculate the vacancy bonus for the apartment, multiply the number of years since the last vacancy increase, in this case ten, by .006 ($.006 \times \$1,200 = \$7.20 \times 10 = \$72$) to arrive at a vacancy bonus rent increase of \$72 per month. The landlord adds this bonus to the vacancy increase and any other allowable increases, such as a bonus for low-rent apartments, to calculate your vacancy lease rent for the apartment.

3. Bonus for Low-Rent Apartments

This increase applies only if the previous tenant's legal rent was \$500 or less. Here's how it works: If the previous tenant's legal rent was less than \$300 per month, in addition to the increase and bonus described above, your landlord can collect an extra \$100 per month. Or, if the previous tenant's legal rent was between \$300 and \$500 per month, the landlord can collect the higher of a) the combined vacancy increase and additional vacancy bonus described above, or b) \$100 per month.

Rent Guidelines Boards

The Rent Stabilization Laws provide for the establishment of Rent Guidelines Boards in New York City, and in the counties of Nassau, Westchester and Rockland. The Boards independently set the maximum allowable rent increase rates for rent-stabilized units.

Each Board consists of nine members, including representatives of tenants, landlords and the public; public members must have at least five years experience in finance, economics or housing. The Chair of each Board is selected from among the public members. In New York City, the Mayor appoints the board members. Outside New York City, the Commissioner of the State Division of Housing and Community Renewal (DHCR) appoints the board based on recommendations from local legislators.

Rent Guidelines Boards meet throughout the year to review the cost and availability of financing, cost of living indexes and other relevant factors to arrive at the annual guidelines for rent increases. They also consider the economic condition of the residential real estate industry, including current and projected real estate taxes, housing supply, vacancy rates, sewer and water rates and operating costs such as insurance rates, governmental fees, fuel and costs.

After a series of public hearings, each board issues an annual "Order" setting out maximum rates for rent increases for rent-stabilized units. Customarily, the Order affects leases beginning October 1 of that year through September 30 of the following year.

Appendix A lists phone numbers, addresses and websites of the Rent Guidelines Boards.

4. The Rent Guidelines Board Vacancy Allowance

In addition to the vacancy increase and bonuses described above, your local Rent Guidelines Board may permit your landlord to tack on a "rent guidelines vacancy allowance." Each year, each Rent Guidelines Board has the discretion to authorize a vacancy allowance for one- and two-year vacancy leases that begin between October 1 of that year and September 30 of the following year. This is often referred to as a "guidelines year." Or the Board may decline to order any vacancy allowance, as they have done since the state legislature enacted the vacancy increase in 1997.

5. How the Rent Increases Add Up

The following example may make the complicated rent-stabilization system a bit clearer.

EXAMPLE: After ten years as a rent-stabilized tenant, Martha elects not to renew the lease on her apartment and moves out at the end of her lease term. George, the new tenant for the apartment, wants to sign a two-year vacancy lease. Here's how George's vacancy lease rent is calculated:

Previous Legal Rent	\$1,020
This is the last registered rent payable by Martha	
Vacancy Increase	+ 204
Since George, the new tenant, is signing a two-year lease, the landlord is entitled to a 20% vacancy increase ($20\% \times \$1,020 = \204).	
Vacancy Bonus	+ \$61.20
Since the landlord hasn't collected a vacancy increase on this unit for eight or more years, the landlord is entitled to collect a vacancy bonus equal to .006 of the old rent, multiplied by 10—the number of years since the landlord last collected a vacancy increase for the unit. ($.006 \times \$1,020 = \$6.12 \times 10 = \$61.20$).	
Bonus for Low-Rent Apartment	+ 0
Since Martha, the prior tenant paid more than \$500 per month, the landlord doesn't qualify for the bonus for low-rent apartments.	
Rent Guidelines Board Vacancy Allowance	+ 0
In addition to the vacancy increase and the vacancy bonus, the landlord can collect the applicable Rent Guidelines Board vacancy allowance, if any. The Board declines to order a vacancy allowance for the guidelines year in which George's lease will begin.	
New Rent for George's Two-Year Vacancy Lease	= <u>\$1,285.20</u>
(a \$265.20 per month total rent increase).	

Once the vacancy rent is set, it may be adjusted only in accordance with rent-stabilization laws and regulations, which permit rent increases for renewal leases (see Section G, below), individual apartment improvements (Section I, below) and major capital improvements to the building in which the unit is located (Section J, below). The rent may also be adjusted downward by any rent reduction orders issued by DHCR in response to a tenant's complaint of a decrease in services provided by the landlord. Chapter 9, Section M, explains how to file a service complaint.

6. NYC Tenants' Right to See How Their Rent Is Calculated

When you sign a vacancy or renewal lease for a NYC rent-stabilized unit, your landlord must put into writing the prior regulated rent for the unit by attaching a "Rent Stabilization Lease Rider" (DHCR Form RA-LR1) to the lease. (9 NYCRR § 2522.5(c).) The Rider informs you of the legal regulated rent in effect immediately prior to the vacancy or renewal, and explains how the present rent was calculated. If your landlord fails to provide the Rider, you don't have to pay the rent increase. (9 NYCRR § 2522.5(c)(3).) A full copy of this form is reprinted in Appendix B.

G. Rent-Stabilized Renewal Lease Rent Increases

If you are covered by rent stabilization, the general rule is that you are automatically entitled to renew your lease for a one- or two-year term at the end of your current lease. There are, however, a few narrow exceptions to the automatic renewal rule that permit the landlord, under certain circumstances, to refuse to offer you a renewal lease. Upon proper notice, the landlord may refuse to renew on any of the following grounds:

- The landlord (or one of the landlord's immediate family members) wishes to occupy your apartment as his or her primary residence.
- You are not using the unit as your primary residence.
- The landlord wishes to withdraw the unit from the rental market, substantially rehabilitate it or demolish the building in which it is located.

Chapter 16 details these grounds for non-renewal. If you've received a notice saying that your landlord does not intend to renew the lease, go to Chapter 16, Section G, for a discussion of your legal options.

If your landlord doesn't have legal grounds to refuse to renew your lease, you must be offered a one- or two-year renewal lease, at your option (as explained, in Chapter 2, Section E). Your landlord is entitled to a "renewal" rent increase. Maximum renewal rent increases are determined annually by local Rent Guidelines Boards. There's a separate Board established for New York City and for each of the counties of Nassau, Rockland and Westchester. (See "Rent Guidelines Boards," above.) To figure out how much your landlord can raise the rent, look at the current Rent Guidelines Board Order. To obtain a copy of the current or past orders, contact the applicable Rent Guidelines Board.

EXAMPLE: Amanda's lease on her New York City rent-stabilized apartment expires August 31. Because the landlord has no grounds upon which to refuse to renew Amanda's lease, she must be offered a renewal lease for a term of one or two years. Amanda's current rent is \$1,300 per month. To determine the maximum permitted rent increase for her renewal lease beginning September 1, Amanda must look at the current NYC Rent Guidelines Order. It covers leases that begin between October 1 of the prior year and September 30 of current year. If the Order authorized rent increases of 2% for one-year renewal leases and 4% for two-year renewal leases, that means that Amanda's maximum renewal rent would be \$1,326 for a one-year renewal lease ($2\% \times \$1,300 = \26 ; $\$1,300 + \$26 = \$1,326$); or \$1,352 on a two-year renewal lease ($4\% \times \$1,300 = \52 ; $+\$1,300 = \$1,352$).



When you renew your lease, your landlord may insist that you increase your security deposit by an amount equal to the renewal rent increase. For more information on security deposits, go to Chapter 5.



H. How Rent-Regulated Tenants May Make a Rent Overcharge Claim in Court or Before the DHCR

Landlords of rent-controlled and rent-stabilized units are prohibited from charging more than the legal regulated rent. When you challenge an overcharge, you begin with a significant tactical advantage: The law presumes that rent overcharges are willful, unless the landlord proves otherwise. There's a stiff triple damages penalty for willful rent overcharges, payable to the tenant. This section explains how tenants can make rent overcharge claims and seek triple damages from the landlord.

1. How Overcharge Claims Arise

There are a variety of ways in which you may be overcharged. The basis of your overcharge might fall into one of the following categories:

- **The landlord made a mistake when calculating your rent-stabilized vacancy or renewal rent.** Since the formulas that landlords must use to calculate rents are complicated, it's not unusual for mistakes to be made. Section F, above, explains how vacancy rents are calculated. Section G, above, covers renewals.
- **The rent you pay is higher than the rent listed for your rent-stabilized apartment on the initial or annual apartment registration statement the landlord filed with the DHCR.** Section E4, above, discusses apartment registration statements.
- **Your landlord took an improper apartment improvement rent hike (before or after you moved in) which has resulted in an overcharge.** Apartment improvement rent hikes for vacant rent-stabilized apartments are calculated on the honor system. The landlord is required to increase the rent by no more than 1/40th of his total costs for any qualified upgrades actually performed. A rent hike is illegal if it is based on improvements that were never installed or work that doesn't qualify. Improvements made during your tenancy are easier for you to monitor, but are not immune from inflated costs and calculation errors. Increases that exceed 1/40th of the landlord's actual costs, excluding finance charges, are also illegal. Section I, below, describes the types of apartment upgrades that

qualify for a rent hike, how the rent hike is calculated and the manner in which the landlord must prove his costs.

- **Your landlord took an improper major capital improvement (MCI) rent increase.** As discussed in Section J, below, MCI rent hikes may only be taken if the DHCR has issued an order granting them. If you are rent-stabilized, your lease must contain a special clause covering MCI rent hikes for work done before you move in. While you can't file an overcharge claim to challenge the DHCR's order granting a building-wide MCI rent increase, you may do so if the landlord misapplied the DHCR's order by charging too big an MCI rent increase. (See Section J3, below.)
- **Your landlord has not complied with a DHCR rent reduction order in effect for the apartment, resulting in a rent overcharge.** Landlords are required to maintain the same level of services as were provided to your apartment when it first became subject to rent regulation. For rent-controlled units, these base-date services are known as "essential services"; and for rent-stabilized units, they are called "required services." In response to a tenant's complaint, the DHCR may order a rent reduction if it finds that the landlord is not maintaining essential or required services to your apartment or to the building in which you live. The rent stays at the reduced rate until the landlord restores services and the DHCR issues a rent restoration order. Chapter 9, Section M, discusses how to file a reduction of services complaint with the DHCR.
- **For New York City rent-controlled tenants, the landlord made a mistake when calculating your maximum collectable rent (MCR) or a fuel cost adjustment, or the unit wasn't eligible for the rent hike.** Section D1, above, explains the eligibility requirements for rent increases under the MBR/MCR system and how rent increases are calculated. This section also covers fuel cost adjustments—fair game for an overcharge claim.
- **For state rent-controlled tenants, the landlord made a mistake when calculating the maximum rent for your state rent-controlled apartment or wasn't eligible for it.** Section D2, above,

explains the rules on operating cost rent increases.

- **Your landlord has collected a security deposit in an amount which exceeds one month's rent.** Chapter 5 discusses security deposit limits.
- **In New York City only, you are a roommate of the tenant, and the tenant is charging you more than your fair share of the rent.** To calculate the maximum rent you may be charged, divide the legal regulated rent for the apartment by the total number of tenants and occupants in the unit. The tenant's spouse, family members and dependent children are not counted as occupants under this formula. For more information this topic, go to Chapter 7, Section D.



If you just moved into a newly stabilized New York City apartment that was vacated by a rent-controlled tenant, you may challenge your initial rent on the ground that it unreasonably exceeds the rent level that had been in effect when the unit was under rent control. This type of claim, which is different than a rent overcharge claim, is known as a Fair Market Rent Appeal. It must be filed with DHCR as soon as possible after your receipt of a copy of the initial registration statement for the unit which the owner is required to file with DHCR within 90 days after you move in. See Section E, above, for more information on Fair Market Rent Appeals. State rent-stabilized tenants may not challenge the rent on this ground.

2. Strict Time Limits Apply to Overcharge Claims

There's no time to dawdle if you discover or suspect a rent overcharge. Rent overcharge claims regarding rent-stabilized rents must be filed *within four years of the first month in which the overcharge occurred.* (CPLR 213-a; RSL 26-516.) Rent-controlled tenants have just *two years from the date of the first overcharge* to act. (NYC Rent Control L. 26-413(e)(2); 9 NYCRR 2206.8; New York Emergency Housing Rent Control Law § 11(5).) For rent-stabilized units, a tenant's overcharge claim triggers an examination of an apartment's rent history—a look back at all of the rent increases and reductions taken during the four-year period preceding the filing of the claim. This examination may include a review of any rent bills, canceled rent checks, rent registration statements,

MBR forms, fuel costs rent adjustment notices or DHCR orders reducing or increasing the rent. For rent-controlled units, a judge or the DHCR may look back only two years prior to the date of the claim. Since the rent regulations were amended in late 2000, these time limits have been strictly enforced. (See for example, *McCarthy v. DHCR*, 736 N.Y.S.2d 353 (1st Dep't 2002).) Courts and the DHCR are prohibited from examining or even considering any rent history prior to the four- (or two-year) look-back period. The practical result is that any illegal rent overcharge that goes unchallenged for more than four years (or two years for rent-controlled units) becomes legalized by the mere passage of time—even if the landlord has been unjustly enriched by having collected it.

EXAMPLE: Marvin moved into his rent-stabilized apartment under a vacancy lease that began October 1, 1997. After reading this book, Marvin discovers that his landlord made a \$50 mistake when calculating the vacancy rent for his apartment, resulting in a rent overcharge each month under his first lease and two subsequent renewals. On November 15, 2002, Marvin files a rent overcharge complaint. Applying the four-year statute of limitations, the DHCR looks back to see if all rent adjustments made by the landlord since November 16, 1998—four years before the complaint was filed—were proper. Since the first month in which the overcharge occurred, October 1997, was more than four years prior to the date Marvin filed his overcharge complaint, and all rent increases collected since November 16, 1998, were lawful, the DHCR dismisses Marvin's complaint.

All rent-regulated tenants are entitled to triple damages for “willful” overcharges found to have taken place during the two-year period prior to the date the tenant's overcharge claim is raised. This two-year limitation applies to rent-stabilized tenants too, even though a court or the DHCR can “look back” up to four years prior the date of the overcharge claim.

EXAMPLE: On October 1, 1999, Sidney moved into a rent-stabilized unit in the Bronx. The rent under his initial one-year “vacancy” lease is \$1,850 per month. On October 1, 2000, Sidney renews his lease for another two-year term at a

rent of \$1,961. On June 15, 2001, Sidney files an overcharge complaint with the DHCR, claiming that the landlord's individual apartment improvement rent increase for work done before he moved in (and while the apartment was vacant) was excessive. The DHCR asks the landlord to respond by proving her costs for the apartment improvements performed before Sidney moved in. After reviewing the landlord's submission, the DHCR finds that the landlord took too big a rent increase and that Sidney was overcharged \$150 per month under the one-year vacancy lease and \$159 per month under the two-year renewal lease. On September 10, 2002, the DHCR issues an order rolling back the rent under the renewal lease to \$1,802 per month and ordering the landlord to pay Sidney triple damages of \$11,448 for the last 24 months ($24 \times \$159 \times 3$); and to refund \$1,800 in overcharges collected during the preceding 12 months ($12 \times \$150$).



Even if you have verified that the rent under your vacancy lease was properly calculated, you may be paying an overcharge that was first charged to and paid by a previous tenant. To check whether prior rent hikes were lawful, new tenants should obtain a copy of the rent registration history for their apartment as soon as they move in to determine if there has been an overcharge. Section 4, below, explains how to obtain a printout for your apartment from DHCR.

3. Deciding Between a Court and the DHCR

Both the courts and DHCR are statutorily granted the power to hear and decide rent overcharge claims. This section looks at the relative advantages and disadvantages of each option, so you can figure out what's best in your circumstances.

a. Going to Court

Going to court is the fastest way to get your overcharge claim heard and decided. The major disadvantage of going to court is the risk of being ordered to pay your landlord's attorney fees if you lose. Most rent-stabilized leases (and some old leases for rent-controlled units) contain attorney fees clauses. These provisions award attorney fees to the prevailing party in any tenancy-related lawsuit between you and your landlord. If you sue your landlord for rent

overcharge, but the judge fails to find any overcharge during the applicable look-back period (see Section 2, above), you can be required to pay your landlord's legal fees. Therefore, tenants should be reasonably certain that their landlords have indeed overcharged them before going to court. If you're not sure that there's been an overcharge, and you have an attorney fees clause in your lease, you may be better off filing a DHCR overcharge complaint instead of going to court. The next section discusses this option.

If your claim is for \$3,000 or less, you can sue in small claims court. The simplified procedures of small claims court make it a friendly forum for non-lawyers, as explained in Chapter 19. But if you are seeking triple damages, there's a good chance that your claim will exceed \$3,000. If so, you have two alternatives. The first is to bring a civil court action against your landlord in state court. The big benefit to filing a legal action is that you get an automatic right to pre-trial "discovery"—the right to demand and review the landlord's rent records and ask pointed questions to your landlord (under oath) before going to trial. To start a civil action, you must draft and serve a summons and complaint, and be familiar with the rules of civil procedure and evidence. Most tenants need a lawyer's help to start and maintain a civil action.



Gather together your rent records before making your claim. Rent-stabilized tenants may present documents that relate to the four-year period before your claim is made. Rent-controlled tenants may present evidence relating only to the prior two-year period. A checklist of relevant documents appears in Section 4, below.

A cheaper, easier alternative to filing a civil court lawsuit is to stop paying rent, wait for your landlord to bring a nonpayment eviction proceeding against you, and then raise your overcharge claim as a defense and counterclaim in your answer to the nonpayment petition. (Chapter 15 discusses nonpayment proceedings, petitions and answers.) One drawback to this approach is that, unlike civil actions, there's no automatic right to discovery in an eviction proceeding. If you lose the case, you'll need to pay all the rent that's due within five days to avoid eviction. You could also be on the hook for your landlord's legal fees if there's an attorney fees clause in your lease. But if you win, the court may immediately roll

back your rent, award a money judgment to you for any overcharge collected, including triple damages if the court decides the overcharge was willful. While a landlord may appeal the money judgment, you pay the lower rent while the appeal is pending.



Before going to court, consider bringing the suspected overcharge to your landlord's attention first.

This is required before filing a DHCR rent overcharge complaint. If you're right, a smart landlord will give you an immediate refund of any overcharges collected in the last four years (two years if you're rent-controlled), so as to avoid the triple damages penalty. A sample rent overcharge letter to the landlord appears below in Section 4. If negotiation doesn't work, you can sue for triple damages.

b. Filing a DHCR Complaint

Instead of going to court, rent-regulated tenants who believe they are paying more than the legal regulated rent for their apartments may file a complaint of rent overcharge with the DHCR. For rent-controlled tenants, this alternative is almost always a bad idea. While the DHCR may correct your rent in response to an overcharge complaint, it is not authorized to award triple damages to rent-controlled tenants. That's a lot to give up for the relative ease and convenience of using DHCR instead of the courts.

For rent-stabilized units, however, there's no question that the DHCR is authorized to impose triple damage penalties against landlords who are unable to prove that a rent overcharge is not willful. While the process is fairly straightforward—tenants don't need a lawyer, can file by mail and don't need to appear before the agency—filing a DHCR complaint is a shockingly slow process. Initial decisions take anywhere from eight months to two years to be processed. And if you win, you can be reasonably certain that your landlord will file a "petition for administrative review"—a DHCR appeal that can take another 18 months to three years to be decided, while you continue to pay the overcharge. If you win the administrative appeal, the landlord may go to State Supreme Court to have the administrative decision evaluated by a judge—meaning an even longer delay.

If, however, you are unsure about whether the landlord overcharged you, and if there is an attorney fees clause in your lease, filing an overcharge com-

plaint with DHCR minimizes the risk of having to pay big legal fees to your landlord. Filing with DHCR also makes sense for those very patient tenants who can't stand courthouses and can't afford an attorney who will appear for them. The following section explains how to file a DHCR complaint.

4. How to File a Rent Overcharge Complaint With the DHCR

The DHCR tweaked its overcharge complaint procedures in 2001, in response to the December, 2000 amendments to the rent regulations. Here are the latest rules.

a. Rent-Stabilized Tenants Should Review Registration History First



Rent-controlled tenants can skip this step because their units are not subject to the annual registration requirements that apply to rent-stabilized units.

Before filing a complaint, DHCR suggests that rent-stabilized tenants call DHCR's InfoLine (718-739-6400) to request a computer printout of the registration history for their apartments. This will show the rent as registered by the landlord for the previous four years (the time limit for making a rent overcharge complaint). Remember, just because a certain rent is listed on a printout doesn't make it lawful. Your landlord reports these rents to DHCR, and DHCR doesn't question them unless you file an overcharge complaint.

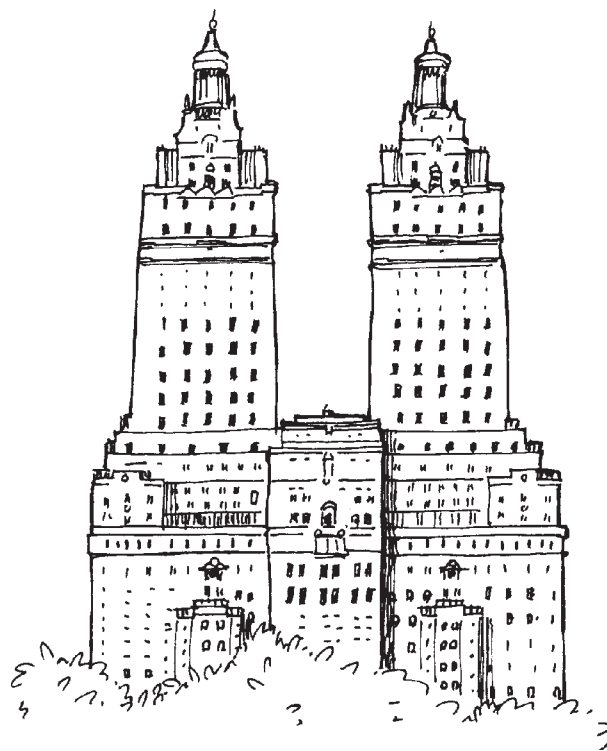
If you are being charged more than the current registered rent for the unit, the registration history will help you prove your overcharge. And if you're good at math, you can use the registration history to help figure out whether all of the rent increases taken during the last four years were kosher. While renewal rent increases are fairly easy to compute (see Section G, above), figuring out rent hikes for vacancy leases (Section F) and MCI rent hikes (Section J, below) are much harder because the calculations are more complicated. Individual apartment improvement rent increases are impossible for tenants to figure out without a crystal ball, since they are based on the landlord's improvement costs and are calculated and taken by the landlord on the honor system. DHCR doesn't audit these increases unless and until you file an overcharge claim.

Reading DHCR's Fact Sheet #26, "Guide to Rent Increases for Rent-Stabilized Apartments in New York City," may help you with the rent increase calculations. You can get it by calling the DHCR Infoline or by downloading it from the DHCR website (www.dhcr.state.ny; click "Rent Administration," then click "Fact Sheets").

While getting the registration history from DHCR for your unit may not confirm whether you have been overcharged, it can't hurt and could actually help you piece together the history of rent increases for your unit during the four-year-look-back period. Section 2, above, explains how far back the DHCR may look into your apartment's rent history to find an overcharge.

b. Try to Resolve the Overcharge Claim With Your Landlord

Before filing a rent overcharge complaint with the DHCR, all rent-regulated tenants are required to contact their building owner or managing agent to try to resolve the overcharge. You may contact the owner or manager by letter, in person or by phone. If you call or visit your landlord or manager, make a note



of the date, since you will need to include it on the complaint form. If you write to the landlord or manager, you must attach a copy of your letter to the complaint form. A sample complaint letter appears below.

Model Rent Overcharge Complaint Letter to Landlord

November 11, 200X

Leslie Bowden
113-46 Springfield Blvd.
Queens Village, NY 11429

Re: Apartment 3-B, 113-50 Springfield Blvd.,
Queens Village, NY 11429

Dear Ms. Bowden,

As you know, I have been the rent-stabilized tenant of the above-referenced apartment for the last 14 months. I recently reviewed the DHCR Rent Registration printout for my apartment and noted that the rent first charged 26 months ago to the prior tenant of my apartment was 50% higher than the previous year's registered rent.

I believe that this increase was excessive. Kindly investigate and justify all rent increases taken for my apartment over the last four years so that I may be assured that I am paying the lawful rent for my apartment. In the event that there was an overcharge, please refund any excess rent collected from me immediately. If we cannot resolve this matter within the next 30 days, I shall have no choice but to make an overcharge claim in court or before the DHCR.

Sincerely,

Ralph Destefano, Tenant

Ralph Destefano, Tenant

While trying to resolve an overcharge may seem like a big waste of time, doing so may actually work. Put yourself in the landlord's shoes. If your tenant figured out that she'd been paying too much rent, would you come clean and send the tenant a refund

check or deny it and risk paying triple damages when the DHCR does the math later on? Smart landlords settle up with their tenants immediately, unless they're low on cash or intend to sell the building in the near future.

c. How to Complete the DHCR Overcharge Complaint Form

The first step to filing an overcharge complaint is to obtain a "Tenant's Complaint of Rent and/or Other Specific Overcharges in Rent Stabilized Apartments" (DHCR Form RA-89). If you are rent-controlled, you need a "Tenant's Complaint of Rent and/or Other Specific Overcharges in Rent Controlled Apartments" (DHCR Form RA-89-C). You can get the forms by calling the DHCR InfoLine at 718-739-6400, visiting your local DHCR office (Appendix A has a list of addresses) or downloading them from the DHCR website (www/dhcr.state.ny.us).

To complete the form, gather all your rent records for the last four years (two years if you are rent-controlled). The documents you'll actually need will depend on the nature of your complaint and whether you are rent-controlled or rent-stabilized. The Rent Overcharge Document Checklist, below, lists the types of documents that can help answer the questions on the complaint form.

The next step is to complete the complaint form, remembering to sign and date the last page. Make two copies of the complaint and any documents that support your claim of overcharge. Mail the original and one copy (with copies of supporting documents attached to each) to: State of New York, Division of Housing and Community Renewal, Office of Rent Administration, Gertz Plaza, 92-31 Union Hall Street, Jamaica, NY 11433.

Keep one copy of the overcharge complaint and all original documents.

d. What Happens Next?

Within a month after you mail your rent overcharge complaint to DHCR, expect to receive an acknowledgment and a docket number for your case. It is important to keep the docket number in a safe place, since you'll need it to discuss the status of your complaint or to file additional papers with the DHCR.

The DHCR will send a copy of your complaint to your landlord, who must respond in writing within 30 days. The landlord must itemize the amount of rent payable under the current lease and under each

Rent Overcharge Document Checklist

- ☐ **A copy of your overcharge complaint letter to the owner or managing agent or, if the complaint was oral, the date and manner you made your complaint.** DHCR will not accept your overcharge complaint unless you already tried to work the problem out with your landlord.
- ☐ **Your initial lease, if you have one.** This is the lease you signed when you first moved into the apartment. For rent-stabilized tenants, this is known as a “vacancy lease.” The DHCR complaint form asks for the commencement and expiration dates and the amount of rent listed on the lease. If you weren’t offered a written lease when you moved in, you’ll need to list the first rent you paid for the apartment. You can document that rent with cancelled checks, rent bills or rent receipts. If you’re not sure what a renewal lease looks like, see the reproduced rent-stabilization renewal lease in Appendix B.
- ☐ **Any renewal leases.** If you have signed one or more renewal lease offers since your initial lease, you will need all of the ones you signed during the prior four-year period to complete the form.
- ☐ **DHCR rent registration statements and MBR Notices.** A rent form you’ve been sent by your landlord or the DHCR, such as an apartment registration statement for a rent-stabilized unit, or an MBR notice for a rent-controlled unit, may support your claim of overcharge if it lists a rent that is lower than the amount which you actually paid, or if you’ve lost any other proof of the rent paid during a certain time period—for example, a canceled rent check or a rent bill.
- ☐ **DHCR rent reduction orders.** Pull from your file any DHCR orders that reduced the rent for your apartment (for example, in response to a tenant complaint of a decrease in required or essential services) or that restored the rent to its prior level (issued in response to the landlord’s certification that required services have been restored). Since these orders have the effect of lowering the rent and later restoring it to its former level, they are relevant to the unit’s rent history.
- ☐ **Rent bills or invoices.** You’ll need these to complete and prove your overcharge complaint if you can’t find your leases, or if you didn’t have a lease. Bills and receipts are also relevant if the landlord charged you more rent than was listed on your lease, or failed to lower your rent in response to a DHCR rent reduction order.
- ☐ **Cancelled rent checks or rent receipts.** These are proof of the amount of rent or security you actually paid to the landlord (or to the tenant, if you are a subtenant).
- ☐ **Records of prior and pending complaints with DHCR.** If you have ever filed any other complaint about the same rental with DHCR—for example, a prior overcharge complaint—you’ll need to list the agency-assigned docket number on the complaint. DHCR sends you this number in the mail when it receives your complaint.
- ☐ **Records of court proceedings in which you raised the overcharge complaint.** If you have raised the same overcharge issue in a prior or pending court action or proceeding, you will need to list the Index number assigned to the case by the court. You’ll find this number on the top right side of the notice of petition, petition or complaint. If a judgment or decision was rendered by the court, you must attach a copy of it to your DHCR complaint.
- ☐ **Major Capital Improvement Rent Increase Orders.** If your landlord has qualified for a major capital improvement (discussed in Section J, below), you will need to list the docket number, the amount of the rent increase and the date the landlord began collecting it. The DHCR will check to make sure the landlord correctly calculated the rent hike.
- ☐ **Individual Apartment Improvement Rent Increase information.** If you consented to any individual apartment improvement rent hikes (discussed in Section I, below), you’ll need to list the improvement item, the date it was installed and the amount of the increase. If the improvement was made while the apartment was vacant (before you moved in), you obviously won’t have this information. The DHCR will ask the landlord to supply it.

prior lease for the unit for the applicable “look-back” period prior to the date you filed your overcharge complaint. (Section 2, above, describes time limits on rent overcharge claims.) This is known as a rent history. Like you, the landlord must also submit documentation to substantiate the rent.

Then it’s time to wait, and wait, and wait some more. If DHCR finds that the landlord charged you more than the legally regulated rent for the unit, the landlord is on the hook for the amount of any overcharge collected. If the DHCR finds that the overcharge was “willful,” you can be awarded triple damages. Both you and the landlord have the right to appeal the decision.

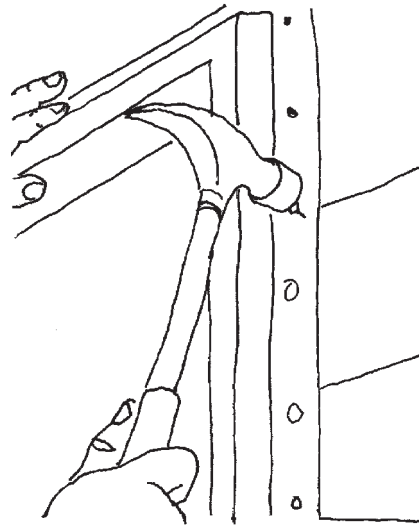
I. “Individual Apartment Improvement” Rent Increases for Rent-Stabilized and Rent-Controlled Units

When a landlord makes improvements to rent-regulated units by, say, installing a new refrigerator or replacing a wood floor, the landlord may be entitled to an “Individual Apartment Improvement Rent Increase.” The amount of the rent hike is equal to 1/40th of the improvement’s cost. The increase is permanent and does not expire after 40 months. If the apartment is vacant, the landlord may take an individual apartment improvement rent increase in addition to a vacancy increase (this applies to rent-stabilized units, as discussed in Section F, above). If the apartment is occupied, the apartment improvement rent hike may be taken in addition to other lawful rent increases, such as for a rent-stabilized renewal lease (Section G, above) or a major capital improvement (Section J, below).

If the apartment is vacant, this rent increase is a snap for landlords to get. No consent is required from the DHCR or from the incoming tenant to improve a vacant apartment. The landlord may simply perform the work and raise the rent. (NY Unconsol. L. § 8626(d); NYC Admin. Code § 26-511.) While incoming tenants have no say over the scope or costs of the work performed, once they have signed a lease, they can challenge the rent increase (as explained in Section H, above) if they think it was based upon inflated invoices or was improperly calculated.

For occupied units, the rules are different. If you and the landlord mutually agree to an apartment improvement, you must consent to the improvement and the rent increase in writing. No DHCR approval is required. (9 NYCRR §§ 2502.4, 2522.4, 2102.3(b), 2204.2(a).) Your landlord may insist that you increase your security deposit by an amount equal to the rent increase.

If you don’t agree to the rent hike, the landlord can refuse to make the improvement and may instead repair what exists. For instance, say your old-model refrigerator has again broken down. Your landlord offers to replace it with a brand-new one, for a monthly rent increase of \$10 (1/40th of \$400). If you refuse, the landlord may opt to repair the one that is in your apartment or replace it with a used but operational refrigerator.



1. What Improvements Qualify?

As a general rule, the landlord may not seek a rent increase for performing ordinary repairs, maintenance or decorating work. Fixing a dishwasher or replacing a broken window sash doesn’t qualify for a rent hike, because that type of work is considered ordinary maintenance. (For information on what repairs are required under the warranty of habitability, go to Chapter 9.) But if you agree to an apartment upgrade, such as the installation of a brand-new appliance or a completely new window, the work will entitle your landlord to the rent increase.

What Qualifies for an Individual Apartment Improvement Rent Increase?

Here are examples of the kinds of improvements that DHCR has said qualify for an individual apartment improvement rent increase, and ordinary repairs which don't:

Improvements That Qualify for Rent Increase: New appliances, such as air conditioners, refrigerators, ranges and dishwashers; new kitchen cabinets, vanities and/or countertops; bathroom improvements like toilets, sinks, tubs, shower doors, faucets, medicine cabinets and new tiling; new light fixtures; new doors; new windows, window blinds or shades and replacement flooring (not repairs).

For rent-controlled units, DHCR considers painting to be an apartment "improvement" where painting is not one of the services provided to the unit when it became subject to rent control. (The DHCR can tell you what services are required and included in your rent. See Section C, above, for more information.) For all other tenants, painting work is not considered an "improvement." For details on the landlord's obligation to paint apartments, see Chapter 9.

Ordinary Repairs That Don't Qualify for a Rent Increase: Scraping and refinishing wood floors; replacing cracked or broken tiles; replacing light bulbs, entrance door locks or window panes. The landlord may not charge extra rent for performing this type of work, either before or after you've moved in. Chapter 9 details what repairs and maintenance landlords are required to perform in apartments.

Examples of improvements that qualify for a rent increase—and repairs that don't—are shown above. If you have any question about whether a specific individual apartment qualifies for a rent increase, ask the DHCR to issue a written "opinion letter." Write down your question as specifically as possible and send to the DHCR at this address:

NY State Division of Housing and
Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, Queens, NY 11433
Phone: 718-739-6400

Alternatively, you can ask an experienced landlord-tenant lawyer to give you an opinion as to whether a specific individual apartment improvement will qualify for a rent increase.

2. Calculating the Rent Increase

When your landlord makes apartment improvements, your rent can go up by 1/40th of the cost of the equipment or improvement. The rent hike is a permanent addition to the base rent for the unit—it doesn't expire in 40 months. When figuring out the cost of the improvements, the landlord is permitted to include charges for labor, materials, equipment, sales tax and delivery fees. The costs for removing an old appliance before a new one is installed, or for demolition and debris removal, may also be included in the total. Financing charges, however, may not be included in the improvement cost total.

Before you agree to an apartment improvement rent increase, keep in mind that the rent increase is permanent. If you plan to remain in the apartment for more than 40 months, you'll be required to continue to pay the rent increase even after you've reimbursed the landlord for the full cost of the improvement.

EXAMPLE: You agree to the installation of a brand-new refrigerator. The landlord's total expense is \$650 including tax, delivery and removal charges. Your landlord may permanently increase the monthly rent for the unit by \$16.25 (1/40th of \$650).

3. Must You Agree to the Improvement and Rent Increase?

Once you've moved in, your landlord will probably ask for your written consent for the improvement and the rent increase. Your landlord is legally entitled to do this, so long as the rent increase is properly calculated. To avoid problems, make sure any "consent" agreement you sign covers the following points:

- Full description of the improvement/s and the total cost. (*Example:* "New, white 34" General Electric stove. Total cost \$648.50.") You are entitled to see proof of the improvement's cost before signing the agreement.

- Date installation will be complete.
- Total monthly rent increase. (This should be no more than 1/40th of the total cost of the improvement, not including finance charges.)
- Amount of any corresponding increase in your security deposit.
- Date the rent increase will be effective. (This must be after the date installation is complete.)

4. How to Fight a Rent Hike Based on Pre-Move-In Apartment Improvements

If the landlord made improvements to your apartment before you moved in, your consent was not required. The landlord was entitled to just do the work and add 1/40th of the cost to the new rent. You may, however, challenge your initial vacancy rent by filing a rent overcharge claim within four years of the date the rent was increased (the first month of your lease). (Section H, above, discusses rent overcharge complaints.) If you file a claim, the landlord may be required to submit proof of the cost of the improvements.

According to DHCR Policy Statement 90-10, your landlord may submit any one of the following four documents as acceptable proof of improvement costs:

- cancelled checks dated around the same time the improvement was installed
- invoice receipts marked "paid in full"
- a signed and dated written contract, or
- a sworn statement from a supplier or contractor describing the improvement made to the unit and stating that he was paid in full for the equipment or improvement.

If the landlord is unable to adequately prove the costs of the improvements, all or part of the rent increase may be revoked and you will be entitled to a refund of any resulting rent overcharges paid to the landlord. You may be entitled to triple damages if the overcharge is deemed "willful."

J. Major Capital Improvement ("MCI") Rent Increases for Rent-Stabilized and Rent-Controlled Apartments

If your landlord makes a building-wide major capital improvement to a property, such as installing new

windows in each unit or putting a new roof on the building, you may be required to pay a "Major Capital Improvement" (MCI) rent increase. MCI rent hikes permit the landlord to recoup the cost of an eligible MCI within seven years. The rent hike is permanent and affects both rent-controlled and rent-stabilized units. (9 NYCRR §§ 2102.3(b)(1); 2202.3(a), (b); 2502.4(a)(2); 2522.4(a)(2).) Your landlord may insist that you increase your security deposit by an amount equal to the major capital improvement rent increase.

The collection of an MCI rent hike does not affect your landlord's right to other rent increases for renewals of rent-stabilized leases (Section G, above), operating cost increases for rent-controlled units (Section D) or individual apartment improvement rent increases (Section I, above). The landlord may collect more than one rent increase if he is entitled to it.

1. What Work Qualifies As an MCI?

To qualify as an MCI, the improvement or installation must:

- relate to the operation, preservation and maintenance of the property
- benefit all tenants, and
- be depreciable under the Internal Revenue Code as something other than an ordinary repair.

For example, you can get hit with an MCI rent increase if your landlord installs a new boiler in your building, but not if the landlord merely repairs or rebuilds the existing boiler.

Here are some items that qualify as MCIs: new air conditioners for the building, aluminum or vinyl siding on all exposed sides of the building, complete bathroom modernization in every unit, new boiler room or expansion to accommodate new boiler, complete catwalk replacements, new chimneys, complete courtyard/walkway resurfacing, new fire escapes, new gas heating units in every unit, new hot water heaters, incinerator upgrading, new intercom systems, parapet replacements, brick pointing and exterior waterproofing, re-piping, re-roofing with single-ply rubber roofs or multi-ply asphalt, new solar heating systems, structural steel replacement, new television security monitor systems, new waste compactors, new water tanks, new aluminum-framed windows (wood-framed buildings are allowed only for landmark buildings). (See 9 NYCRR § 2522.4(a).)

If you have any question about whether a specific major capital improvement qualifies for a rent increase, ask DHCR to issue a written “opinion letter.” Write down your question as specifically as possible and send to the DHCR at this address:

NY State Division of Housing and Community
Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, Queens, NY 11433
Phone: 718-739-6400

Alternatively, you can ask an experienced landlord-tenant lawyer to give you an opinion as to whether a specific MCI will qualify for a rent increase.

2. How to Fight the Landlord’s MCI Rent Increase Application

To get an MCI rent increase, the landlord must complete and file an “Owner’s Application for a Rent Increase Based on Major Capital Improvements (“MCI”)” (DHCR Form RA-79) with the DHCR within two years of physically completing the improvement. A new landlord can apply for a rent increase based on an MCI completed by your previous landlord during the prior two-year period, so long as the previous landlord never obtained a rent increase based on the same improvements. The new landlord must be able to prove the previous landlord’s MCI costs.

After the landlord files his MCI rent increase application with the DHCR, the agency notifies you and the other tenants in your building about the application. You’ll have an opportunity to respond within a set time period, usually about a month. On the form provided by the DHCR, you may challenge the MCI rent increase by making one or more of the following objections:

- The work doesn’t qualify as an MCI because it consisted of or included repairs to existing systems or equipment.
- The improvement didn’t benefit all of the building’s tenants.
- The MCI work wasn’t properly performed or fully completed.
- The landlord didn’t submit the right proof of his MCI costs. To be eligible for the rent increase, the landlord must prove each of his MCI costs to the DHCR by submitting cancelled checks,

invoice receipts marked “paid in full,” signed contract agreements for the work or signed statements from suppliers or contractors stating that installation was completed and paid in full.

- The DHCR has determined that required services for the building or your apartment are not being maintained or there is a DHCR rent reduction order in place. Chapter 9 covers required services and DHCR rent reduction orders.
- The building has an outstanding DHCR building-wide rent reduction order in effect (unless the landlord has filed an application with the DHCR to restore the rent) or
- The DHCR has issued an outstanding finding of harassment against the landlord. It is against the law for landlords to engage in conduct designed to harass tenants into giving up their rent-regulatory rights. Chapter 11, Section C, explains anti-harassment laws and remedies.



Since MCI rent increases affect every rent-regulated tenant in the building, consider joining with other tenants to fight the landlord’s MCI rent increase application. Depending on the size of the proposed rent increase, banding together with other tenants may make it possible to hire an experienced landlord-tenant attorney to challenge the application on behalf of all of the tenants in the building.

The landlord will get copies of all tenant objections and will have an opportunity to respond. In some cases, the DHCR will inspect the improvements. The DHCR will make a final determination on the rent increase application by issuing an order granting the rent increase in part or in full, or denying it. Both landlords and tenants may appeal the order (instructions for filing an appeal are included with the DHCR’s order).

3. How Big an MCI Increase May the Landlord Take?

If the DHCR issues an order granting the MCI increase, your monthly rent hike is calculated by taking the total cost of the MCI (as allowed by DHCR) and dividing it by 84—the number of months in seven years. That sum is then divided by the number of rooms (not units) in the building. This yields the cost of the MCI the landlord can collect per room per month.

The amount of rent increase the landlord may collect in one year varies for NYC and state rent-stabilized rental units:

- **For all units subject to NYC rent stabilization:**
The rent increase collectible in any one year may not exceed 6% of your rent, as listed on the schedule of monthly rental income filed with the owner's application. Increases above the 6% cap may, however, be spread forward to future years.
- **For all rent-controlled apartments and for stabilized apartments outside NYC,** the increase collectible in any one year may not exceed 15% of your rent as of the issue date of the order. There is no retroactive portion.
- **Units occupied by senior citizens with a valid Senior Citizen Rent Increase Exemption (SCRIE)** are exempt from paying the MCI over the amount of their exemption. Section K, below, explains this exemption.



If the landlord makes a mistake and charges you too big an MCI increase, you may file a rent overcharge claim. Section H, above, explains how.

4. When MCI Rent Increase Begins

The date on which an MCI rent increase becomes effective varies for rent-controlled and rent-stabilized units.

a. Rent-Controlled Units

For rent-controlled units, the rent increase starts with the first rent payment following the date that the DHCR issues the rent increase order. MCI rent increases are not retroactive.

b. Rent-Stabilized Units

For rent-stabilized units, the MCI rent increase may not be collected until the end of your current lease term unless your lease contains a special clause that specifically allows for an MCI rent increase during the lease term. The clause must alert you to the pending MCI application and specifically describe the improvement for which the increase was sought. If that provision isn't part of your lease, your landlord may not collect the increase from you. Landlords who charge MCI increases without this lease clause are subject to overcharge penalties.

Here is a sample MCI notification clause. If you're not sure whether there's a clause in your lease that covers MCIs, look for words like this:

"An application for a major capital improvement rent increase has been filed under Docket No. _____ with the DHCR based upon the following work: _____. Should the DHCR issue an order granting the rent increase, the rent provided for in this lease will be increased accordingly."

The New York City rent-stabilized lease, written by the Real Estate Board of New York, contains a clause like this. Landlords who use other types of leases sometimes add a rider attachment with similar language.

If your vacancy lease contains an MCI clause, MCI rent increases are retroactive to when the landlord applied for the increase. Once the DHCR grants an MCI increase, the landlord can collect it starting as far back as 30 days after he filed the MCI application.

K. Senior Citizen Rent Increase Exemptions (SCRIE) for Rent-Stabilized and Rent-Controlled Tenants

If you are 62 or older, you may qualify for a full or partial exemption from rent increases under the state's Senior Citizen Rent Increase Exemption (SCRIE) program. The SCRIE program applies to rent-regulated tenants who live in the following localities:

- New York City (all counties)
- Nassau County: Town of North Hempstead (unincorporated area), Villages of Great Neck Plaza, Thomaston and Great Neck Village
- Westchester County: Cities of Mount Vernon, New Rochelle, White Plains and Yonkers; Towns of Greenburgh and Mamaroneck; Villages of Mamaroneck, Tarrytown, Pleasantville, Larchmont and North Tarrytown.

Under the SCRIE program, senior citizen tenants are eligible for a full or partial exemption from all rent increases if the *after-tax* income for all members of their household (including income from Social Security benefits, pensions, public assistance and interest) is below a maximum limit set by the municipality (up to \$20,000 as of mid-2002). The

senior citizens must also be paying at least one-third of their income for rent.

It's the tenant's responsibility to apply for and get the exemption. To apply, request an application from the agency that administers the SCRIE program for your locality.

- **In New York City**, the Department for the Aging (2 Lafayette Street, 6th Floor, New York, NY 10007, 212-240-7000) administers the SCRIE program. For an application, contact the department or download an application from its website (www.ci.nyc.ny.us/html/dfta).
- **Outside NYC**, the SCRIE program is run by the DHCR. For an application, contact your local DHCR office.

Once you get a copy of the SCRIE application, complete and return it with proof of age, income documentation and a copy of your lease or latest rent-increase notice. After receiving your application, the SCRIE agency will send you an acknowledgment letter. Your landlord also will receive a notice that you have applied for SCRIE benefits. The landlord will be asked to complete a form that provides the agency with specific information about your building.

You do not need your landlord's consent to participate in SCRIE. Your eligibility depends on your application and supporting documents. When the agency has completed its review, you will receive an approval order or a notice stating the reason you were not eligible for benefits. The approval order will tell you the amount of your rent increase exemption, which is based on your income and rent, and when your exemption period begins and ends. Your landlord will also receive an owner approval order.

The rent increase exemption generally becomes effective the first day of the month after the SCRIE agency receives your application. (While the application is pending, you are required to pay the full rent without exemption.) After receiving the approval order, your landlord must adjust your rent accordingly, including any retroactive adjustments. If you have already paid your full rent for any period within the effective dates of the approval order, your landlord must repay the portion covered by your exemption.

The exemption lasts two years, unless you have signed a one-year rent-stabilized lease, in which case it lasts one year. To remain eligible for SCRIE, you must renew your benefits at the end of the exemption period. The agency will send you a renewal applica-

tion before your benefits expire. When your exemption period expires (after one or two years), your landlord is required by law to extend your SCRIE authorized rent for up to six months. However, failure to reapply will result in the termination of your SCRIE benefits. Then you must repay the landlord that portion of the full legal rent you did not pay during the six-month grace period.

L. Luxury Decontrol of Rent-Stabilized and Rent-Controlled Units

Like all good things, the benefits of being a rent-regulated tenant don't last forever. Depending on your income, once your legal rent rises to \$2,000 or more per month, your landlord may be entitled to have your apartment permanently freed from rent regulation—thanks to the so called “Luxury Decontrol” laws.

The rules on luxury decontrol depend on whether the unit is vacant or occupied. Landlords may deregulate vacant rent-stabilized units once the “vacancy” rent reaches or exceeds \$2,000. (Section F, above, details the way in which vacancy rents are set). As a result, all vacant rent-stabilized apartments rent for less than \$2,000 per month.

Occupied units renting for \$2,000 or more can become deregulated, too. But here's the life raft. In order to qualify for deregulation, the total annual income for you and your household must equal or exceed \$175,000 for each of the previous two consecutive years. For occupied units, the landlord needs to show “high rent” and “high income,” which is why this form of luxury decontrol is also known as “High-Income Rent Decontrol.”

1. The Rules on High-Income Rent Decontrol

DHCR rules for high-income rent decontrol apply to all rent-stabilized and rent-controlled apartments in New York City and State. (See, for example, 9 NYCRR Part 2531.)

a. Definition of Annual Income

“Annual income” means your federal adjusted gross income as reported on your New York State income tax return. “Total annual income” means the sum of annual incomes for all tenants and co-tenants of the

apartment, and all other persons who occupy the apartment as a primary residence other than on a temporary basis. If all or part of the unit is sublet, the subtenant's income doesn't count. But the income of the tenant who is doing the subletting (the overtenant) does count. Income earned by live-in employees, such as nannies or housekeepers, doesn't count either, so long as their occupancy is tied to their employment.

b. Rules for Verifying Income

The luxury decontrol rules do not permit your landlord to ask you how much your annual income is or to even see your tax return. Instead, the procedure for verifying income is as follows:

1. If your monthly rent is \$2,000 or more, you can expect your landlord to send you an Income Certification Form (ICF) on or before May 1st of each year. The ICF form will ask you whether the total annual income for your household for each of the preceding two calendar years exceeds \$175,000.
2. You may respond to the form by checking yes or no. You are not required to furnish the amount or source of any tenant's or occupant's annual income. But you are required to list the names of all tenants, co-tenants and other occupants who permanently reside in the apartment, and the names of any tenant, co-tenants or occupants who vacated the unit during the preceding two years, along with the date each moved out. You must return the completed certification to the landlord within 30 days after it is mailed or delivered to you.

 **Your failure to return the completed ICF within 30 days could result in the entry of a decontrol order—meaning the landlord may seek rent deregulation.** To retain the benefits of rent regulation, tenants must take ICF forms seriously and return them as soon as possible to the landlord.

3. If you certify that your household's annual income has exceeded \$175,000 for each of the prior two years, the landlord may file an Owner's

Petition for Deregulation, accompanied by your completed ICF, on or before June 30th of that year. Within 30 days thereafter, the DHCR will issue a decontrol order.

4. If you certify that your household's income has been less than \$175,000 for each of the preceding two years, your landlord may accept your certification as true (probably unlikely) or dispute it. If the landlord disputes your income certification, expect the DHCR to request such information as may be required for the New York State Department of Taxation and Finance (DTF) to verify your income. Interestingly, you aren't required to furnish your Social Security number or annual income directly to the DHCR. Only the DTF is privy to this confidential information.
5. If the DTF verifies to DHCR that your annual income exceeds the threshold, DHCR will issue an order decontrolling your apartment.

For rent-controlled units, a final DHCR determination deregulating an apartment becomes effective as of June 1 of the year following the application. For example, if the landlord files an Owner's Petition for Deregulation on June 29, 2003, any decontrol order issued by the DHCR will apply as of June 1, 2004. For rent-stabilized units, deregulation becomes effective when your current lease ends. After deregulation, the tenant must either sign a lease calling for payment of the market rent for the unit or move out.

2. Units Exempt From High-Rent/High-Income Deregulation

Certain units are exempt from the deregulation rules—even when the rent rises to \$2,000. Exemptions include units that are rent-regulated solely because the owner receives tax benefits under the Multiple Dwelling Law 7-c, “421-a”; “489”; or “J-51” tax benefit programs, and units covered by the New York City Loft Law. For more information on these programs, call the city's Office of Tax Incentive Programs at 212-863-5517, or check its website at www.ci.ny.us/html/hpd/html/tax_incentives/tax_incentives.html. ■



Protecting Your Security Deposit

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 Landlords will almost always require a monetary security deposit before you move in. If you damage the property or leave early owing rent, your landlord can use your deposit to cover what you owe. Deposits—how much the landlord charges and how they are used—are often a major source of disputes between landlords and tenants.

Fortunately, state laws offer some protection. This chapter explains the rules on security deposits, including how much your landlord can collect, where the money must be put and how much interest you're entitled to. It explains special rules that apply only to rent-regulated tenancies and reviews your security deposit rights if the property is sold to a new owner during your tenancy.



Related topics covered in this book include:

- Paying credit check fees, finder's fees or holding deposits: Chapter 1
- Lease and rental agreement provisions on security deposits: Chapter 2
- Your landlord's right to terminate your lease or rental agreement for a tenant's failure to post a security deposit: Chapter 16
- Getting your deposit back; deductions allowed for cleaning, damages and unpaid rent; how to handle legal disputes involving deposits: Chapter 18.

A. What's a Security Deposit?

Under New York law, a security deposit is defined as any money that's "deposited" by a tenant to secure performance of the tenant's lease obligations, or "advanced" for use later as a rental payment. (GOL § 7-103(1).) Because the legal definition of the term security deposit is so broad, it also includes pet deposits and key deposits, since they are intended to secure your promise to keep your pet from damaging the property or to return the keys at the end of your tenancy.

The "first month's rent," which is customarily paid by tenants when a lease is signed, is not considered a security deposit. That's because it's applied as rent right after the lease is signed. But rent paid in advance for any subsequent month, including the "last month's rent," is subject to the strict security deposit laws.

EXAMPLE: A Manhattan landlord collected pre-paid rent from three tenants. Since they often traveled abroad, the tenants elected to pre-pay several months' rent out of convenience, and to avoid falling into arrears. When the building fell into foreclosure, a judge ruled that the pre-paid rent did not belong to the former landlord but was a type of security deposit that had been held in trust for the tenants under the strict rules that apply to security deposits. Consequently, this prepaid rent had to be refunded to the tenants and couldn't be used to satisfy the former landlord's debts. (*The Yasuda Trust and Banking Co. v. Carven Associates*, NYLJ, 6/28/95, p. 29, col. 3 (Sup. Ct., N.Y. County, 1995).)

B. Last Month's Rent

If your landlord labels all or part of your security deposit as "last month's rent," it must be used that way. Landlords who collect last month's rent tend to treat this money as just another security deposit, and use it to cover not just unpaid rent but also other expenses such as repairs or cleaning. But the law restricts the use of money labeled as last month's rent to its stated purpose: the rent for the last month of the tenant's occupancy.

C. How Big a Deposit Can Your Landlord Demand?

For non-regulated rental units—that is, apartments that are not subject to rent control or stabilization laws—there are no legal limits on the amount the landlord can collect as a deposit. (Dollar limits for rent-stabilized and rent-controlled units are discussed in Section D, below.) Normally, landlords will charge as much as the market will bear, usually one to two month's rent, on the theory that the more you have at stake, the better the chance you will respect the property. The market, fortunately, often puts a practical limit on how large a security deposit you must pay. If other landlords in the area are only charging a deposit equal to one month's rent, a landlord who charges two months' rent for similar properties may have a tough time finding tenants willing to shell out a bigger deposit.

Along with market forces, security deposits are also determined by the type of unit you rent. You can expect a landlord to set a bigger deposit for a house than for an apartment, since there's a greater potential for damage to major systems that require expensive repairs. Similarly, furnished units command higher deposits than unfurnished ones, to cover the risk that you will damage the furniture.

If a hefty security deposit stands between you and the apartment of your dreams, try to negotiate a lower deposit. Here are a few points you can make with the landlord:

- **Offer to pay a slightly higher rent than a high deposit.** Many landlords will agree to this. But remember—unlike the security deposit—the extra rent is not refundable when you move.
- **Offer to pay the deposit in installments over three or four months, rather than in one lump sum.**
- **Offer to get renters' insurance as an alternative to a high security deposit.** If your landlord's worried about damage, offer to get renters' insurance, naming the landlord as an additional insured. Renters' insurance, which usually covers fire or water damage caused by the tenant or the tenant's guests, gives your landlord an extra measure of protection. Depending on the size and location of your apartment, the insurance may be less than the deposit, plus you'll be covered for your own personal property that gets damaged or stolen. Chapter 2 provides more details on renters' insurance. However, understand that renters' insurance will not cover intentional damage.

D. Dollar Limits on Deposits for Rent-Regulated Units

If your apartment is rent-controlled or rent-stabilized, the security deposit may not exceed one month's rent. (9 NYCRR §§ 2505.4; 2105.5; 2205.5; 2525.4.) The New York State Division of Housing and Community Renewal (DHCR), the agency that enforces rent laws, can hit landlords who demand or collect a bigger security deposit with penalties of up to three times the amount of the security deposit overcharge, plus interest. So if you're paying too much, you can either file a rent overcharge complaint with the

DHCR (Chapter 4, Section H, explains how), or you can sue the landlord in court. Chapter 18 covers small claims court actions.

E. Where Your Deposit Money Must Go

The landlord can't mix your security deposit with his other money or spend it as he wishes. That's because, legally speaking, your security deposit belongs to you until it's later refunded to you or used to cover unpaid rent, extraordinary repairs or cleaning costs or other fees authorized by the lease. Chapter 18 discusses permitted deductions to your security deposit.

Your landlord is required to hold your security deposit in trust for you. (GOL § 7-103(1).) Landlords who commingle, or mix tenant security deposit funds with their personal or business funds, risk forfeiting the security deposit. Some judges have ruled that commingling entitles the tenant to the immediate recovery of the deposit—before the tenant moves out. (*LeRoy v. Sayers*, 217 A.D.2d 63, 635 N.Y.S.2d 217 (1st Dept. 1995).) Borrowing from your security deposit or pledging the funds as an asset to get a loan is also off-limits for landlords.

If you live in a building that contains six or more apartments, your landlord must deposit your security deposit into an account at a New York bank. (GOL § 7-103(2-a).) The rule of putting deposits into a New York bank applies even if your landlord owns fewer than six units in the building. It's the building's size—not the number of units your landlord owns in the building—that's the determining factor. Landlords often deposit tenant security deposits in a master security account for which the banks prepare separate statements for each tenant.



Security deposits for tenants of rent-stabilized and rent-controlled units must always be deposited into a New York bank. (GOL 7-103; 9 NYCRR §§ 2505.4; 2105.5; 2205.5.) The deposit may not be placed in an out-of-state bank.

Whenever security deposit funds are deposited in a bank or other financial institution, regardless of the building's size or rent-regulatory status, the landlord must notify you in writing of the amount of the deposit and the name and address of the bank or financial

institution. (GOL § 7-103(2).) This information is usually inserted into the security deposit clause of your lease or written rental agreement.

F. When the Deposit Must Bear Interest

You may be entitled to interest on your security deposit, depending on the size of the building and whether the unit is regulated. Here are the rules.

Rental units in buildings with five or fewer units. The landlord is not required to pay interest on your security deposit, unless the unit is rent-regulated. (*Williams v. Brand*, NYLJ, 5/3/96, p. 32, col. 3 (App. Term, 2d Dept.).)

Rent-stabilized or rent-controlled premises. Your security deposit *must* be placed in an interest-bearing account in a New York bank. (9 NYCRR §§ 2505.4; 2105.5; 2205.5; GOL 7-103(2-a).)

Premises in a building with six or more units. Your security deposit must be placed in an interest-bearing account in a New York bank. (GOL § 7-103(2-a).)

Interest-bearing accounts must earn interest at the prevailing rate (the same rate earned on similar deposits at other banks in the area). Landlords who deposit security deposits in interest-bearing accounts are entitled to 1% of the deposit annually. This compensates the landlord for the administrative cost of establishing and maintaining the account.

EXAMPLE: A landlord deposits Peter's \$1,000 security deposit into an account that earns 4% interest in the first year. Of the \$40 interest earned in Year 1, the landlord keeps \$10 (1% of \$1,000) and Peter keeps \$30 (3% of \$1,000).

G. When Interest Is Payable

When must the landlord pay you the interest earned on your security deposit? The answer depends on whether or not your unit is rent-regulated.

Units not covered by rent regulations. Interest (if required) may be paid annually, held on deposit or applied to unpaid rent. (GOL § 7-103(2).) It's your landlord's call.

Units that are rent-stabilized or rent-controlled. Tenants have three options—technically. You may elect to have the interest 1) paid to you annually, 2) held in trust until the tenancy ends, or 3) applied to

outstanding rent for the unit. (9 NYCRR §§ 2525.4; 2105.5; 2205.5; 2505.4.) As a practical matter, though, most landlords instruct their banks to send rent-regulated tenants a check for their share of the interest at the end of the year. This arrangement satisfies most tenants. You can make alternate arrangements if necessary.

H. How Landlords May Increase Security Deposits

Your landlord's ability to raise your security deposit depends on whether you have a lease or a rental agreement.

If you signed a lease, your landlord can't raise the security deposit during the term of the lease, unless the lease allows it or you consent to pay more. You might agree to a higher deposit, for example, in exchange for your landlord allowing you to keep a pet in your apartment. When you renew a fixed-term lease, however, your landlord may change the security deposit arrangement by requiring a security deposit for the first time, or raising it to a higher amount.



Rent-stabilized renewal leases must be offered on the same terms and conditions as your initial lease. That means that if your rent-stabilized lease required no security deposit, your renewal lease may not require a deposit either. However, when a rent-stabilized lease is renewed at a higher rent, the landlord may collect enough money from the tenant to bring the security deposit (if any) up to the new monthly rent.

If you're a month-to-month tenant, however, the landlord can change the amount of the security deposit, as well as other terms of the agreement such as rent, by oral or written notice. Your agreement is not necessary. See Chapter 3, Section H, for more on this.

I. Your Security Deposit Rights When the Building Is Sold

If your landlord sells the premises, the general rule is that all tenant security deposits must be transferred to the new owner *within five days* of the sale. The same rule applies:

- if the building is “assigned,” which happens when an owner transfers all rights and interest in the property to someone else (the new owner is the “assignee”), or
- if the building is foreclosed (the new owner is the “receiver”).

After your landlord has turned over the security deposits to the new owner, all tenants must be notified, by registered or certified mail, of the name and address of the new owner. (GOL § 7-105 (1).)

The landlord must turn over the full amount of your security deposit, including any earned interest, to the new owner. Your old landlord may not take any part of your security deposit for back rent owed or for any damage in excess of wear and tear that he knows about at the time the building is sold.

The only exception to this general rule applies when your lease calls for a different procedure upon the sale (or lease) of the premises. Some leases provide that in the event that the property is sold, the landlord must refund the security deposit to the tenant. In such cases, instead of following the general rule, the seller must follow the procedure authorized by the lease and distribute the deposit proceeds to the tenant.



One popular New York City rent-stabilized apartment lease, published by the Real Estate Board of New York, gives landlords the option of either refunding the tenant's security deposit or turning it over to the new landlord within five days of a sale or lease of the building. Sellers who fail to turn over tenant security deposits or to notify tenants of a security deposit transfer may be found guilty of a misdemeanor (a minor crime). (GOL § 7-105.)

J. Your Options If the Landlord Mishandles Your Deposit

Most landlords know and follow the security deposit rules explained in this chapter. If you suspect that the landlord is commingling your security deposit with other funds, or hasn't paid you the interest you're entitled to, or has violated another security deposit rule, your best bet is to file a complaint with the State Attorney General's (AG) Office. Chapter 18, Section F, explains how. The AG will investigate your complaint and, if necessary, compel your landlord to follow state law on security deposits. ■



Getting Moved In

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nce you find a rental, hopefully one you really like at a reasonable price, you're ready for the next hurdle—moving into your new home. Everyone dreads moving because so much can go wrong. We've all heard horror stories about apartments that aren't ready for their new occupants, movers who rip off tenants and hassles from big utility companies like Con-Ed. But if you're armed with the right information, and a little luck, you can easily clear the moving hurdle, save yourself some time and money and get on to more enriching activities, like throwing your first dinner party at your new address.

In this chapter, we provide the tools and information to help you:

- ensure that your new rental unit is ready for occupancy (Section A)
- set the stage for getting your security deposit back at the end of your tenancy (also in Section A)
- hire a competent mover (Section C)
- deal effectively with utilities when opening new accounts (Section D)
- understand your right to install satellite dishes and other wireless receivers (Section E), and
- get your landlord's approval for any alterations or improvements you want to make to the unit (Section F).



If you've already moved in, you can obviously skip this chapter



Model Letters and Sample Forms in This Chapter

- Apartment Inspection Checklist
- Model Agreements Regarding Repairs^o

A. Inspecting the Rental Unit Before Move-In

Many tenants have the illusion that when they turn the key and open the door to their new home, they'll be greeted with freshly painted walls, shining floors and windows and a sparkling clean kitchen and bath. The reality is that some landlords don't have

enough time after one person moves out to properly prepare a unit for the next tenants. Other landlords don't care—they simply do as little work as possible. To ensure that the rental unit's condition will meet your standards, take a pro-active approach by inspecting and photographing the unit before you move in, and informing the landlord of any inadequacies.

Conducting a pre-move-in inspection will also help you head off a common landlord-tenant dispute that may occur at the end of your tenancy—the issue of deductions from your security deposit.

1. Preparing an Apartment Inspection Checklist

When you first visited your new place, you got a general impression of its condition. To avert all sorts of future arguments with your landlord, now you need to go much farther. It is absolutely essential that you check the place over for damage, dirt, mildew and obvious wear and tear before moving in—ideally, before you've signed a lease or rental agreement and paid your first month's rent and deposit—and ask the landlord to take care of any defects you might find.

An Apartment Inspection Checklist is shown below. Use this as a model in preparing your own checklist, documenting the condition of each room in the unit and any furnishings. A checklist that inventories the condition of the rental property at the beginning of the tenancy has an immediate important benefit: It's an excellent way to make sure that the unit is now ready to move into. As you and the landlord, manager or super go over the unit together, you'll be guided by your list to look for and examine important aspects of the rental. Without the checklist as a prompter, you may miss items in your eagerness and excitement to move in.

The checklist is also a good way to protect yourself later on, when it comes time to get your security deposit returned. By noting the condition of the rental at the start of your tenancy, you can minimize the chances that your landlord will unfairly keep all or part of your security deposit for damage such as excessive nail holes in the walls, a cracked bathroom mirror, broken closet doors or a major cockroach problem. Your checklist may establish that:

- the problems existed when you moved in
- the property that was “damaged” was so old that it wasn't worth anything in the first place, or

Apartment Inspection Checklist

GENERAL CONDITION OF RENTAL UNIT AND PREMISES

922 West End Ave
Street Address

18-F
Unit Number

NY, NY 10025
City

	Condition on Arrival		Condition on Departure		Notes
LIVING ROOM					
Floors & Floor Coverings	OK				
Drapes & Window Coverings	Mini-blinds <i>discolored</i>				
Walls & Ceilings	OK				
Light Fixtures	OK				
Windows, Screens & Doors	Window rattles				
Front Door & Locks	OK				
Fireplace	N/A				
KITCHEN					
Floors & Floor Coverings	Cigarette burn hole on linoleum				
Walls & Ceilings	OK				
Light Fixtures	OK				
Cabinets	Two cabinet doors don't close completely				
Counters	Stain near sink				
Stove/Oven	Burners filthy (grease)				
Refrigerator	OK				
Dishwasher	OK				
Garbage Disposal	N/A				
Sink & Plumbing	OK				
Windows, Screens & Doors	OK				
DINING ROOM					
Floors & Floor Covering	Scrape on wood floor near kitchen				
Walls & Ceilings	Crack in ceiling				
Light Fixtures	OK				
Windows, Screens & Doors	OK				
BATHROOM(S)	Bath 1	Bath 2	Bath 1	Bath 2	
Floors & Floor Coverings	OK				
Walls & Ceilings	OK				
Windows, Screens & Doors	OK				
Light Fixtures	OK				
Bathtub/Shower	Tub chipped near faucet				
Sink & Counters	OK				
Toilet	Base of toilet very dirty				

BEDROOM(S)	Condition on Arrival			Condition on Departure			Notes
	Bdrm 1	Bdrm 2	Bdrm 3	Bdrm 1	Bdrm 2	Bdrm 3	
Floors & Floor Coverings							
Windows, Screens & Doors	OK	OK					
Walls & Ceilings	OK	OK					
Light Fixtures	OK	OK					
Other	Mildew in closet						
OTHER AREAS							
Heating System	OK						
Air Conditioning	OK						
Lawn/Garden	N/A						
Stairs and Hallway	N/A						
Patio, Terrace, Deck, etc.	N/A						
Basement	N/A						
Parking Area	N/A						
Intercom	OK						
Other							
Other							

☒ Tenants acknowledge that all smoke detectors and fire extinguishers, if any, were tested in their presence and found to be in working order, and that the testing procedure was explained to them. Tenants agree to test all detectors at least once a month and to report any problems to Landlord/Manager in writing. Tenants agree to replace all smoke detector batteries as necessary.

Apartment Inspection Checklist completed on moving in on May 1 200X, and approved by:

Bernard Cohen and Marcia Crose
Landlord/Manager Tenant

Sandra Martino
Tenant

Tenant

Apartment Inspection Checklist completed on moving out on _____ 200____, and approved by:

Landlord/Manager Tenant

Tenant

Tenant

- the landlord is substantially exaggerating the problems and the cost of fixing damage that did occur.

Many tenants consider suing their landlord in small claims court for their full deposit, but decide against it because they have no way to prove their case. The checklist will be your “Exhibit 1.” Chapter 18, Section B, covers moving out and getting your security returned in detail.

Ideally, you and the landlord should walk through the apartment and fill out the checklist together. You could also ask the property manager or building superintendent to accompany you. If that’s impossible, complete the form on your own. It’s a good idea to take along a friend as a potential witness, who could testify in court if there’s a dispute over security deposit deductions when you move out. Extra careful tenants will want to photograph the unit or make a video, as explained below in Section 3.

The checklist should cover the general condition of each room and any furnishings. The sample shown here is for an unfurnished apartment. If your unit is furnished, simply add the items, such as lamps or chairs, to the section for a particular room, such as kitchen.

Here’s how to complete the checklist:

- Fill out the first column—*Condition on Arrival*—before you move in. Here you should note both serious problems, such as a broken heater or leaking roof, and minor flaws such as a stained kitchen counter. Be sure to note areas or items (especially in the kitchen or bathroom) that are dirty, including any mildew, pest or rodent problems. Mark “OK” next to items that are in satisfactory condition—basically, clean, safe, sanitary and in good working order. Make a note—as specific as possible—on items that are broken, stained, worn, grime-covered, scratched, leaking, smelly, dented, chipped or simply not in the best condition.
- The second column—*Condition on Departure*—is for use when you move out and, ideally, you and the landlord inspect the unit again. At that time, your checklist will document any damage to the rental unit during your tenancy which the landlord may try to recoup by withholding all or part of your security deposit. Chapter 18, Section B, discusses how to complete an Apartment Inspection Checklist when you move out.

- The third column—*Notes*—is the place for you to jot down any comments or details, such as a repair your landlord agreed to make when you were moving in, or an agreed-upon security deposit deduction for a condition on departure that was not your responsibility.

2. Signing the Checklist

After you and your landlord agree on all the particulars on the rental unit, each of you should sign and date the checklist. Then make a copy for your landlord (keep the original with your lease). If you filled out the checklist on your own, send a copy to the landlord with a request to review it, note any disagreements, sign it and return a signed copy to you. Also ask the landlord to make the checklist part of your lease or rental agreement, as explained in Chapter 2, Section B9. Keep in mind, though, that the landlord may legally refuse to sign the checklist or make it part of your lease or rental agreement. Either way, you’ll have a good record of the unit’s condition.

A savvy landlord will update the checklist after making repairs or replacing, adding or removing items after you move in. You should both initial and date any changes.



Test Smoke Detectors and Fire Extinguishers

Local laws may require landlords to provide smoke detectors or fire extinguishers in rental units. Smoke detectors are required in New York City and Buffalo, as explained in Chapter 9, Section D2. Call your town clerk or local fire department to see if any fire prevention devices are required in your locality.

As part of your move-in procedures, made sure the landlord tests all smoke detectors and fire extinguishers in your presence and shows them to be in good working order. Be sure you understand how to:

- Test the fire extinguisher and smoke detector
- Recognize the signs of a failing detector—for example a beeping noise, and
- Replace the smoke detector battery. The commonly held belief that the landlord is responsible, by law, for replacing smoke detector batteries is wrong. It's the tenant's responsibility, as explained in Chapter 9, Section D.

The box on the bottom of the second page of the sample checklist acknowledges that you tested the smoke detector and fire extinguisher in the landlord's presence and found them to be in working order.

3. Photographing the Unit

Taking photos or a video of the apartment before you move in is another excellent way to avoid disputes over the condition of the unit and your responsibility for damage and dirt at the end of your tenancy. In addition to the checklist, you'll be able to compare "before" and "after" pictures when you leave. This should help refresh your landlord's memory, and if you end up in small claims court fighting over the security deposit, help document your point of view.

It is best to take "before" pictures with a Polaroid camera that develops pictures on the spot. This will allow you and the landlord to date and sign the pictures, each keeping a set. Otherwise, use a camera that automatically imprints the date on each photo. If you don't have access to either type of camera, photograph the landlord or the landlord's representative during the inspection. Then develop the pictures promptly and sign and date them on the back. It's a good idea to make a second set of photos, jot the

date on the back, and send them to the landlord within a few days after the inspection. Or, if you have a digital camera, simply email copies to the landlord. If you're doing the inspection on your own, bring a copy of that day's newspaper and photograph the front section as part of one of the photos. If you make a video, clearly state the date and time so that you can prove when the video was made.

You should repeat this process when you leave, as discussed in Chapter 18, Section B.

4. How to Handle Problems

If you discover any problems with your newfound home, try to get your new landlord to fix them before you move in.

a. Serious Problems

The landlord must fix certain defects—such as a broken heater or leaking roof—to comply with the implied warranty of habitability, which requires landlords to furnish premises that are livable, usable and safe. A landlord who does not immediately agree to fix serious problems probably isn't taking the obligation to repair very seriously. You're probably best off looking for someplace else to live. If you've already signed a lease or rental agreement and the landlord refuses to repair a known defect, file a complaint with the local housing code enforcement office. If the unit is rent-stabilized, consider making a complaint to the DHCR as well. Chapter 9 discusses landlords' repair and maintenance responsibilities and how to file a complaint with local inspectors or the DHCR.

If your landlord promises to make repairs or replacements after you move in, be sure to get the promises in writing. Your written agreement should specify the:

- exact repair or replacement to be made—for example, installation of a dead bolt lock
- deadline by which repairs will be made, and
- consequence for the landlord's failure to complete repairs by the promised date—for example, a certain reduction in your rent.

See the Model Agreements Regarding Repairs, below, for sample language.

b. Nonessential Repairs or Improvements

If there are repairs that need to be made that do not affect the unit's habitability—such as a fresh coat of

paint or the replacement of some chipped ceramic tiles—try to work something out.

Many landlords will be willing to make reasonable repairs and improvements, particularly in high-end rentals or if you've impressed the landlord as a good, responsible tenant. If the landlord is unwilling to pay for nonessential repairs or improvements, you might offer to pay part of the expense or do some of the work—for example, offer to paint the apartment if the landlord supplies the paint.



The New York City Housing Maintenance Code requires landlords to repaint apartments every three years. Chapter 9, Section D2, has more information on this requirement.

Model Agreements Regarding Repairs

Serious Problem: Landlord will clear the drains and fix the leaking toilet by March 1, the day the tenant's rental agreement begins. If landlord fails to fix these problems by March 1, Tenant may withhold rent for each day Landlord is late fixing the problem.

Nonessential Repair or Improvement: Landlord will supply up to \$250 worth of paint and painting supplies. Tenant will paint the living room, hall and one bedroom using off-white latex paint on the walls and ceilings and water-based enamel paint on all wood surfaces (doors and trim). Paint and supplies shall be picked up by Tenant from ABC Hardware and billed to Landlord.

B. Clarify Important Terms of the Tenancy

A good lease or rental agreement should cover the basic issues of your tenancy, including rent, deposits and sublets. (Chapter 2 discusses leases and rental agreements.) If your landlord does little more than sign a tersely worded lease or rental agreement and hand you a key, make sure you have all the necessary information before you move in. For example, be sure you know:

- phone numbers for the landlord, manager or super (day and night)
- how to report repair and maintenance problems

- any rules for the use of grounds, garage and storage space
- location of garbage cans, recycling programs and trash pickup days, and
- other issues that affect the particular rental, such as use of a laundry room.

Organize Your Rental Records

To get your tenancy off to a good start, set up a file folder with the following documents:

- a copy of your rental application, references and credit report (these will save you some work next time you move)
- your copy of the signed lease or rental agreement, plus a few extra copies (you need to give a utility service a copy of your lease, as explained below in Section D)
- any building rules or regulations
- deposit information and receipt, and
- Apartment Inspection Checklist and photos taken at move-in.

After you move in, add these documents to your file:

- records of your repair requests, including how and when they were handled
- rent increase notices, and
- any other correspondence with your landlord or government agencies such as the DHCR.

Establishing a good recordkeeping system will provide a valuable paper trail should disputes later develop—for example, regarding your landlord's failure to make necessary repairs. Without good records, the outcome of a dispute may come down to your word against the landlord's, always a precarious situation.

C. Hiring a Competent Mover

Whether you're moving a few blocks or a few hundred miles, entrusting all of your worldly goods to a perfect stranger can be stressful. Fortunately, federal and state consumer protection laws govern the entire moving process, from getting an estimate before the move to making a damage claim after it's over. This section explains the benefits of using a licensed

mover, what to look for in an estimate, the importance of an inventory and when to buy extra insurance. We also explain how to file a claim if a mover loses or damages your belongings.



If you're renting a truck and asking friends to help you move, you can skip this section.



Know your rights before you hire a mover.

Before signing anything, read this chapter and the government rights pamphlet that applies to you: If you are moving entirely within New York, read the "New York State Department of Transportation Summary of Information for Shippers of Household Goods." If you are moving between New York and another state, obtain a copy of the U.S. Department of Transportation's "Your Rights and Responsibilities When You Move." The mover whom you've chosen may have a copy to give you; if not (or if you want to familiarize yourself with the rules before you settle on a mover, which is a good idea), you can order one from the agency. See "More Information: Licensing Agencies and Other Resources for Movers," at the end of this section.

1. Avoid Unlicensed Movers

Moving companies that pack and carry household goods wholly within New York must be licensed by the New York State Department of Transportation. (NY Transportation Law, Article 9; 17 NYCRR Part 800.) "Interstate" moving companies (moving between New York and another state) must be licensed by the U.S. Department of Transportation Federal Motor Carrier Safety Administration. (49 CFR Part 375.)

To be licensed, a mover must run a bona fide business, keep regular business hours and meet certain financial, safety and experience requirements. Moving rates (officially called tariffs) for licensed companies must be published, and filed with the licensing agency and made available to you. The actual charge you pay to a licensed mover may not exceed its published tariffs (but the mover may offer discounts on its published rates). Finally, licensed movers must carry cargo and liability insurance, always an important consideration when shipping property.

Fly-by-night operations and individuals who moonlight as movers on weekends can't qualify for a license. As a result, using an unlicensed mover is a big gamble because of the likelihood that you will

fall victim to overcharges or go uncompensated for property damage or theft.

2. Getting Estimates

Movers are not required to provide estimates before a move. Many will do so, however, since the business is very competitive and rates for movers vary quite a bit. Smart tenants obtain at least three quotes. When contacting movers for estimates, ask the mover to make a physical inspection of your home's contents. Don't depend on over-the-phone estimates.

There are two types of estimates, binding and non-binding. Here's a look at both.

a. Binding Estimates

A binding estimate is a written estimate that clearly describes the amount of furniture, mirrors, artwork, equipment, china, glassware, clothing, towels, sheets and other sundries being moved; how far you are moving; the services provided (including any boxing, lifting up stairs or extra jobs) and a set cost. To do this, the mover comes to your home, inventories your belongings and asks questions about when and where you are moving.

If you accept a binding estimate from a mover, you enter into an agreement that obligates you to pay the specified charge in full when your move is completed. Since the preparation of a binding estimate is time consuming, federal and state regulations permit movers to charge a fee for this service—it usually runs around \$100.

The good thing about a binding estimate is that no matter how long your move actually takes, or how much your shipment actually weighs, you cannot be charged more than the amount specified in the binding estimate. That can come as a great relief if your moving truck gets stuck in Holland Tunnel traffic or has a flat tire. Just keep in mind that any extra service you request that isn't part of the estimate—for instance, asking the mover to carry a sofa that's too big for the elevator up five sets of stairs—will result in an extra cost, which must be paid in full when your belongings are delivered to your new place.

If you agree to a binding estimate, you will be expected to pay the charges due by cash, certified check, traveler's check or bank check when the move is complete, unless the mover agrees beforehand to accept your credit card or let you pay in installments. If you can't pay what is due, the mover may legally

place your property in storage at your expense until you can pay the agreed charges.

b. Non-Binding Estimates

A non-binding estimate is a written approximation of how much your move will cost. Some movers (especially local movers) base their rates on an hourly charge, while interstate movers base their rates on your shipment's weight or cubic footage and the distance you are moving. Either way, an estimate should identify the property being moved, specify the distance you're moving and clearly describe all services (such as packing) and the total estimated cost. To prepare a non-binding estimate, the mover will come to your rental unit, inspect your belongings, ask about the services you require and inquire when and where you wish to move.

A non-binding estimate is designed to give you a general idea of how much your move will cost. The actual final cost may turn out to be more. To arrive at the actual cost, the mover will use its published tariffs. You are not obligated to pay more than the amount specified in the tariffs on file with the applicable licensing agency for your mover. If the actual cost of the move exceeds the estimate, the mover may not require you to pay more than 110% of the original estimate at the time of the delivery. Even though this is the maximum you have to pay at the time of delivery, you are still on the hook for the balance. Federal and state regulations provide you with a minimum of 30 days after delivery to pay any remaining charges. There's an exception to this rule: If you request services beyond those included in the estimate, the mover may demand full payment for those added services at time of delivery.



At the time of the estimate, ask about the mover's liability for loss or damaged goods. We explain mover liability and how you can increase your protection against loss or damage in Section 6, below.

3. Required Paperwork

Moving companies are legally required to prepare two written documents in connection with your move—an order for service and a bill of lading.

a. Order for Service

The first required moving document is called an order for service. (49 CFR Part 375.5; 17 NYCRR

§ 814.4.) Both you and the mover must sign the order for service. This is not a contract—it's a written confirmation of the moving services you have requested, the dates for pick up and delivery, and the estimated cost. The order may be canceled by you without penalty. If your moving plans are delayed or change, it may be modified in writing.

b. Bill of Lading

The second required document is called a bill of lading. (49 CFR Part 375.6; 17 NYCRR § 814.5.) This is the written contract, signed by you and the mover, that requires the mover to provide the service you have requested and obligates you to pay for the mover's services. The bill of lading must also describe your agreement as to the mover's liability for loss or damaged goods (we explain mover liability and how you can increase your protection against loss or damage in Section 6, below). Before signing it, make sure that the cost and moving services listed on the bill of lading are the same as the ones listed on your estimate and on your order for service. The moving company representative in charge of your move must give you a copy of the bill of lading before loading your furniture in the truck or van.



Keep the bill of lading in a safe place until you have had time to inventory all of the goods moved. You will need it if you are required to make a claim for damage or to dispute a charge.

4. Importance of an Inventory

Before loading your belongings into the truck or van, most movers prepare a written inventory listing each item to be moved and any damage or unusual wear. If the mover doesn't make an inventory, you should make your own. Once an inventory is completed, both you and the mover should sign each page, making sure that all of your belongings are listed and any notes regarding the condition of each item are correct. If an item is delivered damaged or is missing, the written inventory will support your claim for loss or damage. We discuss the claims procedure in Section 7, below).



A picture is worth a thousand words. Even if your mover prepares an itemized inventory, consider taking a video or several photos of your furniture and valuables before they are taken by the movers—just in

case. If you need to make a claim for loss or damage later on, the extra evidence could help you prove the condition and value of a specific piece of furniture or artwork.

As your belongings are delivered to your new rental unit, check each item against the items listed on your inventory. If new damage is discovered, make a record of it on the inventory form and ask the mover's representative to make a note of the damage on the moving company's copy of the inventory. To be extra careful, take a picture then and there, with the mover or his truck in the background, to forestall any claim that the damage was inflicted (or increased) by you after the move.

After the complete shipment is unloaded, you will be asked to sign the moving company's copy of the inventory to show that you received the items listed. Do not sign until you have assured yourself that it is accurate and any missing or damaged items have been clearly noted. Your signature on the inventory operates as the moving company's receipt for your property.

5. Pick-Up and Delivery Dates

You and your mover must agree on the dates your belongings are to be picked up at your current residence and delivered to your new rental unit. (49 CFR Part 375.8; 17 NYCRR § 814.6.) The mover is required to enter the agreed-upon dates on the order for service and the bill of lading, and is contractually obligated to deliver your goods within "reasonable dispatch." The only exception is if unforeseen circumstances beyond the control of the mover prevent the performance of the service as agreed to in the bill of lading, such as bad weather or a mechanical problem with the mover's truck. If the mover fails to meet an agreed or guaranteed pick-up or delivery date, you may file a "delay" claim against the mover to recover expenses caused by the delay. See Section 7, below, for details on filing a claim.



Don't cut your move-out date too close. If you are moving out of an apartment on or near the last day of your lease, ask your mover about guaranteed pick up and delivery service. There may be an extra charge for this service (which must be listed on the mover's tariff schedule). If the mover fails to pick up or deliver on a guaranteed date, the mover is contractually obligated to compensate you at an agreed-upon daily

rate or reimburse you for at least some of your resulting expenses, such as having to pay additional rent at your old apartment.

6. Mover's Liability for Loss and Damage

All moving companies are required to assume liability for the value of the goods they transport. (49 CFR Part 375.8; 17 NYCRR § 814.6.) However, different levels of liability provide different amounts of protection. Here are the basics.

a. "Released Value" Provides Free Minimum Protection

At minimum, movers must assume liability for your property at a maximum rate of 60 cents per pound per article. This is called released value protection. This means that any claims for loss or damage will be settled based on the weight of the article multiplied by 60 cents. So if a ten-pound computer component valued at \$1,000 were lost or destroyed, the mover would be liable for no more than \$6.00 (10 x 60 cents). A mover may not charge you for this minimal protection, but you must sign a specific statement on the bill of lading agreeing to it.

b. "Declared Value" Covers the Depreciated Value of Your Property

Unless you agree otherwise, the mover is required to assume liability for loss or damage of your property at its depreciated value (a reduced value that depends on the age of the property and its useful life), up to a maximum limit of \$1.25 times the total weight of your shipment. For example, say the total weight of your property is 4,000 pounds. If the mover loses or damages your laptop computer that cost \$1,800 three years ago, the mover would be liable for the depreciated value of the component, which might only be around \$500. If your entire shipment is destroyed, the maximum claim you could make is for \$5,000 (\$1.25 x 4,000).

Unlike "released value" protection, which is free, the mover may charge you \$7.00 for each \$1,000 (or fraction thereof) of liability assumed for goods moved under a declared value agreement. So, for a 4,000-pound shipment, the extra charge is \$28. If the value of your shipment exceeds \$1.25 per pound times the weight of the shipment, you may buy additional liability protection from the mover by declaring a specific dollar value for your shipment. The amount

of value that you declare is subject to the same valuation charge (\$7.00 per \$1,000). For example, if you declare that your 4,000-pound shipment is worth \$10,000, the mover will charge you \$7.00 for each \$1,000 of declared value, or \$70, for this increased level of liability. If you ship articles that are unusually expensive, you may wish to declare this extra value. You must make this declaration in writing on the bill of lading.

c. “Full Value” or “Full Replacement” Protection

Many movers offer full value protection or full replacement value. If you purchase this type of insurance, any articles that are lost, damaged or destroyed will be either repaired or replaced with like items. Alternatively, you may be offered a cash settlement based on market value, regardless of the age of the lost or damaged item.

The cost for full value protection runs around \$8.50 per \$1,000 of declared value, subject to a minimum declaration of \$21,000. The exact cost for full value protection varies by mover.



Movers are permitted to limit their liability for loss or damage to articles of extraordinary value, unless you specifically list these articles on the shipping documents. Under applicable regulations, this limitation applies to any item with a value exceeding \$100 per pound. Ask your mover for a complete explanation of this limitation before you move so that you may make any necessary declarations.

d. Third-Party Insurance

Some movers may offer to sell, or obtain for you, a separate liability insurance from a third-party insurance company if you release your shipment for transportation at the minimum released valuation of 60 cents per pound per article. Many people feel more comfortable purchasing insurance from an outside carrier, rather than the mover. If you purchase this separate coverage, keep in mind that in the event of loss or damage, the mover will be liable only for an amount not exceeding 60 cents per pound per article. You'll need to recover the balance of your loss from the insurance company up to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance and the cost.

If you purchase liability insurance from or through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document before the move. If the mover fails to do so, the mover becomes fully liable for any claim for loss or damage attributed to its negligence.



If you have a renters' insurance policy, speak to your agent about adding a floater to your current policy to cover your property during relocation. The cost depends on how much insurance you need. Using your own insurance company, instead of buying extra coverage from the mover, may make it easier to file a claim later on. Keep in mind that you'll need to prepare an itemized inventory of your property for insurance purposes before your move, and take photos of your valuables, just in case.

7. Filing a Claim With Your Mover

If you have a problem with your moving company, you must start with the company itself. All licensed moving companies are required to maintain a claims procedure to assist their customers. They must also offer neutral arbitration as a means of resolving consumer disputes involving loss or damage. Most claims fall into one of three categories:

- **Delay claims.** If your mover has failed to meet agreed-upon pick-up and delivery dates, you may file a claim for any resulting expenses. You usually have 30 days after the missed date to file a delay claim. For more information on pick-up and delivery dates, see Section 5, above.
- **Overcharge claims.** If you believe that the mover has charged you more than agreed to in a binding estimate or in its published rates for a non-binding estimate move, or has charged you for extra services you never authorized or received, you may file an overcharge claim with the mover. While you have up to nine months to make an overcharge claim, do so as quickly as possible, before moving company records have a chance to be lost or destroyed.
- **Property loss or damage claims.** If any of your inventoried property is lost or damaged, file a loss or damage claim with your mover. Bear in mind that your mover's liability for your loss or damage may be limited, depending on the liability agreement you made with the mover

(Section 6, above, discusses the mover's liability for loss). You have up to nine months to make a claim, but we encourage you to do so as soon as possible. For proof, you'll need a copy of the inventory, and if property was delivered damaged, keep the item in the box or packing material it was moved in.

You can get detailed information from your mover on how and where to file a claim. Movers are required to acknowledge receipt of your claim within 30 days. Within 120 days, the mover must either pay or make a final settlement offer on your claim. If a claim is not resolved within this 120-day period, the moving company must write you every 30 days and inform you of the status of your claim. For in-state movers, a copy of this letter must also be sent to the State Department of Transportation.

If you can't resolve the claim with the mover, you have a choice. You may have the claim settled by an arbitrator, or you can go to court and file suit against the mover. Licensed interstate movers must participate in a dispute resolution program, which requires that most claims be submitted to a neutral arbitrator for resolution. Arbitration is not mandatory. But, since arbitration is often a less expensive and more convenient way to resolve a claim than going to court, you may want to consider voluntarily submitting your claim. Unless you agree otherwise, you and your mover pay equal shares of the arbitration fee, which is customarily based on the amount of the claim that is in dispute.

If your move was wholly within New York State, you have another remedy. You may file a complaint with the New York State Department of Transportation, which licenses movers in New York State. The agency will investigate your complaint. If you suspect that you have been overcharged, the agency will check to see if the rates you were charged were in accordance with the mover's published tariffs.



Although the federal government maintains regulations governing the processing of loss and damage claims, it does not resolve those claims. If you cannot settle a claim with an interstate mover, you'll have to submit the claim for arbitration with the arbitration association specified in the bill of lading or file a lawsuit against the mover.

More Information: Licensing Agencies and Other Resources for Movers

Different agencies regulate in-state and out-of-state movers.

In-state movers

In-state movers are licensed and regulated by the New York State Department of Transportation (DOT) Carrier Certification and Compliance Bureau. The DOT has two offices, one in New York City (Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, tel. 718-482-4815; email: amarchesi@gw.dot.state.ny.us) and one in Albany (State Campus, Building 7A, Fourth Floor, Albany, NY 12232, tel. 518-457-7194; email: lscotto@gw.dot.state.ny.us).

To find out if a moving company is licensed and in good standing with DOT, call its toll-free intrastate moving hotline at 800-786-5368. You can also use the hotline number to file a complaint. To obtain a copy of DOT's publication, "Summary of Information for Shippers of Household Goods," call or write DOT. To read or download a one-page sheet of moving tips for consumers, visit the DOT website (www.dot.state.ny.us/ts/consumer_info.html).

Interstate movers

Interstate movers are licensed and regulated by the Federal Motor Carrier Safety Administration. To file complaint about an interstate mover, call 888-DOT-SAFT (888-368-7238) or write to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, Public and Consumer Affairs, Suite 600, 400 Virginia Avenue, SW, Washington, DC 20024 To obtain the Federal Highway Administration's Office of Motor Carriers publication, *Your Rights and Responsibilities When You Move*, ask your mover for a copy or go to this federal government website: www.fmcsa.dot.gov, where you can find several other helpful publications on moving.

The *Better Business Bureau* keeps records of consumer complaints against in-state and interstate moving companies. To inquire about a specific mover, call 212-533-6200 in the New York City area and 800-828-5000 outside New York City.

D. Applying for Utility Service

Before moving in, you'll need to apply to various utilities to begin providing service at your new rental unit. This section covers your legal rights when dealing with utilities and suggests where you can turn if you run into difficulties.

Your first step is to make a list of all the utilities for which you, as tenant, are responsible. You can get this information from the utility clause of your lease or rental agreement. (Chapter 2, Section B, has more information on utility provisions.) Usually, tenants are responsible for electricity, telephone and sometimes gas service. Cable or satellite television, along with Internet service, are almost always the tenant's responsibility. Your landlord or manager should be able to provide you with the names of the utility companies that serve your new neighborhood so that you can set up accounts before you move in.

Procedures for setting up new accounts vary among utilities. Some let you apply for service over the phone, while others require a written application. When written applications are required, the utility is legally permitted to require reasonable proof of your identity (such as a driver's license or credit card) to validate your name and current address, along with a copy of your lease for your new unit.

1. Apply for Service As Early As Possible

While you won't want to begin paying for service until the morning of the first day of your tenancy, you should apply for service as soon as you've signed a lease. Utilities must provide service to you within five business days of receiving your application (you may, of course, request a later start date). A utility is legally excused from providing service within five days only if:

- conditions at the property are unsafe or construction is incomplete
- a labor strike prevents workers from supplying service, or
- the utility was refused access to the property.

In such cases, the utility can't just walk away. It must provide service as soon as possible after the problem is resolved.

2. Utility Deposit Requirements

After reviewing your application for service, the utility may require you to post a monetary deposit. The deposit is intended to protect the utility if you skip out on your bill. Under state regulations, a utility may request a deposit from you only if one of the following statements applies to you:

- your lease or rental agreement is for a term of less than one year
- you failed to pay two or more bills in a row to the same utility on a previous account, or
- service to your prior account was shut off for nonpayment within the past six months.

If you are required to pay a deposit, here are some things to keep in mind.

There are limits to how much the utility can demand.

Under state regulations, the deposit may not exceed twice the average monthly bill (or twice the estimated average monthly heating season bill, if you will be a heating customer).

You needn't pay the deposit in a lump sum. You can ask to pay it in installments over a period of 12 months (or more, if you have a lease that runs longer than 12 months).

Your utility deposit must earn interest. You can get your deposit (plus interest) refunded if you pay your bill on time for one full year.

Some deposits are prohibited by law. Utilities cannot require a deposit from you if you're 62 or older or a recipient of public assistance or Supplemental Security Income (SSI), unless your service has been shut off for failure to pay a bill within the past six months.

3. If Your Application for Service Is Denied

Utility companies aren't required to approve every application. But if you are denied, state regulations require that the utility send you a notice within three business days of the date you apply for service informing you of:

- the reasons for the denial
- the steps you must take to obtain service, and
- your rights to a review of the denial by the Public Service Commission (PSC), the state agency that oversees utilities (See "More Information: New York State Public Service Commission," below).

The most common reason that new tenants are denied service is because they owe money on a previous account with the same utility. Paying the full amount owed will quickly solve the problem, but may not be as easy as it sounds. If you can't come up with everything you owe right away, don't panic. The utility is required to offer you a Deferred Payment Agreement, which permits you to pay off the amount you owe in installments. New service can begin as soon as you've signed the agreement. If the utility refuses to open your account or refuses to enter into a Deferred Payment Agreement with you, make a complaint with the PSC.

More Information: New York State Public Service Commission

The Public Service Commission (PSC) is a state agency authorized to set rates and ensure that utility companies provide adequate service to consumers. It regulates the utilities that provide electric, gas, telecommunications (including telephone), water, cable and steam to New York residents. (The Federal Communications Commission, or FCC, deals with satellite dishes and other wireless reception devices. See Section E, below, for more information.)

If you have a problem with a utility concerning your electric, gas, steam, water, or telephone service, and are not satisfied with the utility's response, call the PSC's toll-free Helpline at 800-342-3377.

If a utility has refused to provide electric or gas service, call the PSC Emergency Hotline at 800-342-3377 (within New York State only). Call 212-290-4171 if you're calling from outside New York State.

For all other complaints, including problems with cable providers, write to the: NYS Public Service Commission, Consumer Services Division, 3 Empire State Plaza, Albany, NY 12223, or visit the agency's website at www.dps.state.ny.us.

E. Your Right to Install a Satellite Dish

The Federal Communications Commission (FCC) prohibits landlords from imposing restrictions that unreasonably impair your ability to install, maintain or

use an antenna or satellite dish that meet criteria described below. Here's a brief overview of the FCC rule. For details, contact the FCC. See "More Information: Federal Communications Commission," below.

1. Devices Covered by the FCC Rule

The FCC's rule applies to video antennas, including direct-to-home satellite dishes that are less than one meter (39.37 inches) in diameter, TV antennas and wireless cable antennas. These pieces of equipment receive video programming signals from direct broadcast satellites, wireless cable providers and television broadcast stations. Antennas up to 18 inches in diameter that transmit as well as receive fixed wireless telecom signals (not just video) are also included.

Exceptions: Antennas used for AM/FM radio, amateur (ham) and Citizen's Band (CB) radio or Digital Audio Radio Services (DARS) are excluded from the FCC's rule. Landlords may restrict the installation of these types of antennas, in the same way that they can restrict any modification or alteration of rented space. We discuss alterations in Section F of this chapter.

2. Permissible Installation of Satellite Dishes and Antennas

Tenants may place antennas or dishes only in their own, exclusive rented space, such as inside the rental unit or on a balcony, terrace, deck or patio. The device must be wholly within the rented space (if it overhangs the balcony, your landlord may prohibit that placement). Also, your landlord may prohibit you from drilling through exterior walls, even if that wall is also part of your rented space.

You *cannot* place your reception devices in common areas, such as roofs, hallways, walkways or the exterior walls of the building. Exterior windows are no different than exterior walls—for this reason, placing a dish or antenna on a window by means of a series of suction cups is impermissible under the FCC rule (obviously, such an installation is also unsafe). Tenants who rent single-family homes, however, may install devices in the home itself or on patios, yards, gardens or similar areas.

3. Restrictions on Installation Techniques

Landlords are free to set restrictions on how the devices are installed, as long as the restrictions are not unreasonably expensive, or if the restrictions are imposed for safety reasons or to preserve historic aspects of the structure. Your landlord may insist that his maintenance personnel (or professional installers) do the work.

a. Expense

Landlords may not impose a flat fee or charge additional rent to tenants who want to erect an antenna or dish. On the other hand, your landlord may be able to insist on certain installation techniques that will add expense—as long as the cost isn't excessive and reception will not be impaired. Examples of acceptable expenses include:

- insisting that an antenna be painted green in order to blend into the landscaping, or
- requiring the use of a universal bracket which future tenants could use, saving wear and tear on the building.

b. Safety Concerns

Your landlord may insist that tenants place and install devices in a way that will minimize the chances of accidents and will not violate safety or fire codes. For example, landlords may prohibit placement of a satellite dish on a fire escape, near a power plant or near a walkway where passersby might accidentally hit their heads. Your landlord may also insist on proper installation techniques, such as those explained in the instructions that come with most devices. What if proper installation (attaching a dish to a wall) means that your landlord will have to eventually patch and paint a wall? Can the landlord use this as reason for preventing installation? No—unless there are legitimate reasons for prohibiting the installation, such as a safety concern. You can, however, be charged for the cost of repairing surfaces if you remove the device when you move.

4. Placement and Orientation of Antennas and Reception Devices

Tenants have the right to place an antenna where they'll receive an acceptable quality signal. As long as your chosen spot is within the exclusive rented

space, not on an exterior wall or in a common area as discussed in Section 2, above, your landlord may not impose restrictions on placement—for example, by requiring that an antenna be placed only in the rear of the rental property—if this results in your receiving a substantially degraded signal or no signal at all.

Reception devices that need to maintain line-of-sight contact with a transmitter or view a satellite may not work if they're stuck behind a wall or below the roofline. In particular, a dish must be on a south wall, since satellites are in the southern hemisphere. Faced with a reception problem, you may want to move the device to another location or mount it on a pole, so that it clears the obstructing roof or wall. Tenants who have no other workable exclusive space may want to mount their devices on a mast, in hopes of clearing the obstacle. You may do so, depending on the situation.

- **Single-family rentals.** Tenants may erect a mast that's 12 feet above the roofline or less without asking for the landlord's permission first—and the landlord must allow it if the mast is installed in a safe manner. If the mast is taller than 12 feet, your landlord may require you to obtain prior permission before erecting it—but if the installation meets reasonable safety requirements, your landlord should allow its use.
- **Multi-family rentals.** Tenants may use a mast as long as it does not extend beyond their exclusive rented space. For example, in a two-story rental a mast that is attached to the ground-floor patio and extends into the air space opposite the tenant's own second floor would be permissible. On the other hand, a mast attached to a top-story deck, that extends above the roofline or outward over the railing, would not be protected by the FCC's rule—a landlord could prohibit this installation because it extends beyond the tenant's exclusive rented space.

5. Must You Use the Landlord's Central Antenna or Satellite Dish?

Faced with the prospect of many dishes and antennas adorning an otherwise clean set of balconies, your landlord may install a central antenna or dish for use by all tenants.

This is lawful only when the landlord's device provides:

- **Equal access.** The tenant must be able to get the same programming or fixed wireless service that he could receive with his own antenna.
- **Equal quality.** The signal quality to and from your home via the landlord's antenna must be as good or better than what you could get using your own device.
- **Equal value.** The costs of using the landlord's device must be the same or less than the cost of installing, maintaining and using an individual antenna, and
- **Equal readiness.** Your landlord can't prohibit individual devices if installation of a central antenna will unreasonably delay your ability to receive programming or fixed wireless services—for example, if the landlord's central antenna won't be available for months.

If your landlord installs a central antenna after you have installed your own, the landlord may require removal of your individual antenna, as long as his device meets the above requirements. In addition, the landlord must pay for the removal of your device and compensate you for the value of the antenna.

6. Where to Complain If Your Landlord Hassles You About Your Antenna or Satellite Dish

In spite of the FCC's attempts to clarify tenants' rights to reception and landlords' rights to control what happens on their property, there are many possibilities for disagreements. For example, what exactly is "acceptable" reception? If the landlord requires antennas to be painted, at what point is the expense considered "unreasonable?"

Ideally, you can try to avoid disputes in the first place dealing directly with your landlord. But, if all else fails, here are some tips to help you resolve the problem with a minimum of fuss and expense.

a. Discussion, Mediation and Help From the FCC

First, approach the problem the way you would any dispute—talk it out and try to reach an acceptable conclusion. Follow our advice in Chapter 19 for settling disputes on your own—for example, through negotiation or mediation. You'll find the information on the FCC website very helpful. The direct broadcast satellite company, multi-channel distribution service, TV broadcast station or fixed wireless company

may also be able to suggest alternatives that are safe and acceptable to both you and your landlord.

b. Get the FCC Involved

If your own attempts don't resolve the problem, you can call the FCC and ask for oral guidance. You may also formally ask the FCC for a written opinion, called a Declaratory Ruling. For information on obtaining oral or written guidance from the FCC, follow the directions as shown on the FCC website.

c. Go to Court

When all else fails, you can head for court. If the antenna or satellite dish hasn't been installed yet and you and the landlord are arguing about the reasonableness of your landlord's policies or your plans, you can ask a court to rule on who's right (just as you would when seeking the FCC's opinion). You'll have to go to a regular trial court for a resolution of your dispute, where you'll ask for an order called a "Declaratory Judgment." Similarly, if the antenna or dish *has* been installed and you want a judge to stop an eviction action over it, you'll have to go to a regular trial court and ask for such an order staying the eviction proceeding. Unfortunately, the simpler option of small claims court will not usually be available in these situations because most small courts handle only disputes that can be settled or decided with money, not court opinions about whether it's acceptable to do (or not do) a particular task.

Needless to say, going to regular trial court means that the case will be drawn-out and expensive. You could handle it yourself, but be forewarned—you'll need to be adept at arguing about First Amendment law and Congressional intent and be willing to spend long hours in the library preparing your case. In the end, you may decide that it would have been cheaper to simply use cable access to keep tabs on the Yankees.

More Information: Federal Communications Commission

For complete details on the FCC's rule on satellite dishes and antennas, see www.wireless.fcc.gov or call the FCC at 888-CALLFCC (toll free). The FCC's rule was upheld in *Building Owners and Managers Assn. v. FCC*, 254 F.3d 89 (D.C. Cir. 2001).

F. Alterations and Improvements

When you move in to a new place, it's natural to want to make it your own by installing carpets and drapes or perhaps painting or wallpapering a wall or two. While tenant fix-ups and decorating projects can improve the appearance and value of the rental unit, many landlords are dead set against them and will try to evict tenants who perform them. So before taking out your screwdriver or starting any home improvements, take a close look at your lease or rental agreement. Most contain a provision that prohibits a tenant from making any "alterations, decorations, additions or improvements" to the rental without the landlord's written consent. Some leases are even more specific and prohibit you from painting or wallpapering or installing built-in decorations, partitions or flooring without prior permission. Chapter 2 discusses common provisions in leases and rental agreements.



If you are a disabled person seeking modification of your living space to meet your needs, your landlord will not be able to legally stand in your way.

Under the federal Fair Housing Amendments Act of 1988, you are entitled to modify your rental unit to make it safe and enjoyable. Chapter 11, Section A, explains how to go about obtaining permission to perform necessary modifications.

Landlords may terminate your tenancy if you violate a no-alterations clause, on the ground that you violated a substantial obligation of the lease. While tenants usually get a chance to "cure," or fix, lease violations before their tenancies are terminated, many landlords don't find out about tenant alterations until the project is done. By then, curing the lease violation may mean removing wallpaper, lifting carpeting, taking down new light fixtures or even knocking down a partition wall—all time-consuming and potentially costly jobs. Chapter 16 discusses how to respond to cure and termination notices.

Even if you have no lease, or your lease or rental agreement is silent on the issue, you can put your tenancy—and your security deposit—at risk if you make alterations or improvements to your rental unit without your landlord's consent. Under the common-law doctrine of "waste," a tenant may not do or permit anything during her tenancy that will change the

essential character of the premises or reduce its value—for example, by adding a wall to create an extra bedroom or removing a closet without the landlord's permission. Like beauty, "waste" is sometimes in the eye of the beholder: What may seem to you to be an enhancement may appear to the landlord as a detraction. The hard truth is that because the landlord owns the property, his views on the matter will likely be upheld by a judge.

Chapter 9, Section F, discusses the tenant's duty not to commit waste. Landlords may sue tenants who permit or commit waste for compensatory damages, and, in some cases, for the tenant's removal. (RPAPL §§ 801, 815.)

The moral of the story? To play it safe, always get written permission from your landlord before you start any decorating or renovating project in your rental unit. Many landlords permit tenants to spruce up their apartments—within limits. Here are some projects your landlord may allow you to do or install:

- painting—if the colors you select are neutral
- wall-to-wall carpeting—assuming the landlord approves a sample first and you provide details on the carpet and where you purchased it
- valences for drapes and curtains, or
- built-in bookshelves, so long as you agree to remove them and restore the walls to their original condition when you leave.

If you damage walls, ceilings or floors when you remove your property and don't repair the damage, your landlord can deduct from your security deposit the cost of restoring the unit to the condition it was in when you moved in. Chapter 18 has more on security deposit deductions, including the removal of tenant fixtures.



If you are subletting, get prior permission from the overtenant—not the landlord—before making any alterations or improvements.

If you are subletting a unit in a co-op or condo building, the rules are especially strict. Usually, the tenant-shareholder must sign a comprehensive "alteration agreement" detailing the scope of work and its schedule, and agreeing to pay for any damage to the building or to other apartments that results from the work. In addition, the tenant must provide proof that all contractors are licensed and insured and provide a monetary deposit against damage to the common areas of the building caused by your workers. ■



Enforcing Your Roommate Rights

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Many tenants want to share their apartment with co-tenants, family members or roommates. After all, it is your home. But landlords don't always see it that way. All too often, form leases and rental agreements are riddled with occupancy restrictions that are onerous and downright unenforceable. Fortunately, New York law gives you back many of the apartment-sharing rights your landlord may attempt to steal away. But if you don't know your rights, you can't benefit from them.

In this chapter, we explain co-tenancies and introduce you to a very tenant-friendly New York statute known as the "Roommate Law," which permits eligible tenants to share their apartments with family members and other occupants. Use this chapter to answer questions like these:

- "Can I bring in a roommate?"
- "Can I add my girlfriend to my lease?"
- "When must I tell my landlord exactly who's living in the rental unit?"
- "Can my partner stay in my rent-regulated unit if I die?"



Related topics covered in this book include:

- Rental agreement and lease clauses on occupancy restrictions, subletting and assignment: Chapter 2
- Rules and procedures on sublets: Chapter 12
- Getting terminated for subletting without the landlord's consent: Chapter 16
- Rules on assignments: Chapter 17.



Model Letters and Sample Forms in This Chapter

- Notice to Owner Of Family Members Residing With The Named Tenant In The Apartment Who May Be Entitled To Succession Rights/Protection From Eviction (DHCR Form RA-23.5 (5/99))

A. Living With Co-Tenants

Co-tenants are two or more people who rent a unit together and all sign the same lease or rental agreement, sharing the same rights and responsibilities. A co-tenancy can also arise when two or more people enter into the same oral rental agreement. Written and oral co-tenancies can be created when the unit is first rented (everyone moves in together) or later, when a new tenant is added to an existing lease or rental agreement.

Among themselves, co-tenants may split the rent equally or unequally, depending on their own personal arrangement. However, any co-tenant who signs a lease or rental agreement is independently liable for all of the rent and abiding by the rules of the tenancy. Landlords often remind co-tenants of this obligation by inserting into the lease a chunk of legalese which says that the tenants are "jointly and severally" liable for paying rent and adhering to terms of the agreement. But co-tenants are still bound by this principle of joint liability even if the lease or rental agreement doesn't mention it.

When two or more tenants are jointly and severally liable, the landlord may choose to hold all of you, or just one of you, responsible for lease violations. If a co-tenant leaves, the remaining co-tenants stay fully responsible for rent and abiding by the lease or rental agreement. That means that the landlord may demand the entire rent from just you, should your co-tenants skip out or be unable to pay their share for a particular month. You may also all be evicted even if just one co-tenant has broken the terms of the lease, for example, by damaging property or keeping a dog in violation of a "no pets" clause. Chapter 16, Section C, covers evictions based on lease violations.

In light of the legal ties that bind co-tenants to each other, be very careful about whom you select as a co-tenant. While similar interests and lifestyles often draw roommates to each other, don't overlook a potential co-tenant's ability to pay rent and meet all of the other obligations of the lease or rental agreement.

Glossary of Terms Used in This Chapter

What's the difference between a co-tenant and a roommate? Believe it or not, there's a legal distinction between these two. Here is a list of terms you'll encounter as you read through this chapter, along with their legal meanings under New York law.

- **Tenant.** Someone who has signed a lease or a rental agreement entitling that person to exclusive possession of a rental unit, or who has gained the status of a tenant because the landlord has accepted his presence on the property or has accepted rent from him. A tenant has a legal relationship with the landlord, which creates various rights and responsibilities for both parties.
- **Co-tenants.** Two or more tenants who rent the same rental unit under the same lease or rental agreement. Sometimes co-tenants sign at the same time, or a co-tenant may be added later to an existing lease. As far as the landlord is concerned, each tenant is 100% responsible for carrying out the agreement (in legal jargon, "jointly and severally liable"), including paying all the rent. When one co-tenant leaves, the remaining co-tenants remain fully responsible for carrying out the agreement.
- **Subtenant.** Someone who rents the rental unit from a tenant (called *overtenant* in this situation) under an agreement called a *sublease*. Most leases and rental agreements require the landlord's consent to a sublet. A subtenant has the right to occupy the rental unit for the length of the sublease, whether or not the tenant continues to live in the rental unit. However, the tenant remains 100% responsible for all tenant obligations, including paying all the rent to the landlord. When the subtenant leaves, the tenant is still bound to her lease with the landlord. Chapter 12 explains your sublet rights.
- **Roommate.** Most of us refer to our co-tenants as "roommates." But under New York law, there's a much narrower definition. Legally speaking, a roommate is an immediate family member or unrelated occupant invited by the tenant to live permanently in the rental unit with the tenant. A roommate does not sign a lease and is not a tenant. While a roommate may share expenses with the tenant, there is no obligation to pay rent to the landlord. As far as the landlord is concerned, the tenant remains 100% responsible for the rent. A roommate may leave at any time without any responsibility to the landlord. However, a roommate has no right to remain in the rental unit after the tenant moves out. The only exception is for rent-regulated tenants, as explained in Section F, below.
- **Assignee.** The person to whom a tenant transfers and assigns all of his rights of tenancy. After a lease assignment, the old tenant becomes the "assignor." Unlike a subtenant, an assignee rents directly from the landlord. Chapter 17 explains how assignments work.

How to Handle Disagreements Among Co-Tenants

For all sorts of reasons, relationships between co-tenants can sour—you may have major disagreements about everything from the timeliness of rent payments to housekeeping habits to the number and frequency of overnight guests. And if yours is a romantic relationship that has hit the skids, living together will probably not be viable. Whatever the cause, you may find yourself arguing with your roommates about who should leave.

As a general rule, one co-tenant cannot terminate another's tenancy by filing an eviction lawsuit. You'll have to figure out among yourselves who leaves and who stays.

The situation is different if you rent to a subtenant. As tenant (called "overtenant" in this case), you may have the right to end your subtenant's tenancy. If your subtenant rents from month-to-month, you can terminate the tenancy on 30 days' notice (one month outside New York City), for any reason or no reason, as explained in Chapter 14. If you signed a rental agreement with the subtenant and the rent is late, you may give the subtenant a three-day demand to pay rent or leave, as explained in Chapter 15. You can also terminate the tenancy if the subtenant is violating a term in the sublease agreement, using the rental unit for an immoral or illegal purpose, or if she has been creating a nuisance. Chapter 16 discusses these reasons for termination and the notices required to end the tenancy.



If you fear violence from a co-tenant, get out of harm's way and then call the police.

While this may mean spending a few days with a friend or at a hotel, the inconvenience and possible cost of removing yourself from danger will be well worth it. Once you are safe, contact the police.

B. Your Rights Under the New York Roommate Law

While most landlords would prefer that only named tenants occupy their rental property, state law prohibits landlords from restricting occupancy of a rental unit to only the tenant or co-tenants. New

York law generously gives eligible tenants the right to open their apartment doors to family members and unrelated occupants—none of whom must get added to the lease or rental agreement. But there are limits to your right to share a rental unit with others, as well as legal remedies that permit landlords to remove illegal occupants from the property. In the sections that follow, we take a close look at New York's Roommate Law, which permits tenants to share rental units with certain immediate family members and unrelated occupants.

1. Overview of the Roommate Law

New York's Unlawful Restrictions on Occupancy Law (RPL § 235-f (3)), commonly known as the Roommate Law, was originally enacted to protect "live-in lovers" from eviction. The Roommate Law prohibits landlords from limiting occupancy of a rental unit to just the tenant(s) named on the lease or rental agreement or to the tenant and the tenant's immediate family. It permits tenants to share their rental units with their immediate family members and, in many cases, with unrelated, non-tenant occupants, so long as a tenant (or tenant's spouse) occupies the unit as a primary residence.

a. Who's Covered

The Roommate Law applies across the board. It covers:

- every tenant with a lease or rental agreement, written or oral, including all rent-stabilized tenants, and
- all rent-controlled tenants, even if they have no current lease. (RPL § 235-f (1)(a).)

The only tenants who aren't covered by the Roommate Law are those who don't use their unit as a primary residence (see Subsection 4, below).



Don't let your landlord try to reduce or limit your apartment sharing rights.

Clauses in rental agreements or leases that attempt to waive or modify a tenant's Roommate Law rights are null and void. (RPL § 235-f (7).)

Under the Roommate Law, tenants don't need prior consent to ask an immediate family member or an additional occupant to move in. Nor may the landlord put a family member or other occupant through any type of screening process.

b. Landlord's Right to Find Out Who Lives in a Rental Unit

The Roommate Law requires tenants to notify the landlord within 30 days after anyone new moves in or within 30 days of the landlord's request for information about occupants living in the rental unit. (RPL § 235-f (5).) Most tenants will voluntarily notify the landlord because they want an extra set of keys or want to ensure that the new occupant's mail and packages are accepted at the building. However, if you don't volunteer this information, your landlord may demand it. State law requires you to respond to your landlord's request for the names of anyone who occupies the rental unit within 30 days of being asked for this information. There's no requirement that the landlord's request be in writing.



The NYC Housing Maintenance Code authorizes landlords “at any time” to demand a tenant to complete a sworn statement listing the names and relationship of all occupants residing in the rental unit and the ages of any minor children. Failing to respond to a such a demand can jeopardize your tenancy.



Rent-regulated tenants may use an official DHCR form to tell landlords about new family members or other occupants who may be entitled to succession rights. We explain how the form works in Section E, below.

2. How Many Roommates and Family Members May Share a Unit?

While the Roommate Law prohibits any “unlawful” occupancy restrictions by landlords, there are some limits landlords can impose on apartment sharing. The number of occupants allowed under the Roommate Law depends on how many tenants signed the lease or rental agreement.

a. When Only One Tenant Is on the Lease

If you sign a lease or rental agreement as the sole tenant, your landlord must permit you to share the unit with members of your immediate family, plus one additional occupant and the occupant's dependent children, so long as you occupy the unit as a primary residence.

EXAMPLE: Linda signs a lease for a one-bedroom unit. The following month, Linda invites her

boyfriend Ralph to move into the unit, along with Ralph's five-year-old twins, Jet and Sky. The landlord may not object to this arrangement, since Linda is entitled to share her unit with an additional occupant (Ralph) and the occupant's dependent children (Jet and Sky).

b. When Two or More Tenants Are on the Lease

If you sign a lease or rental agreement with one or more co-tenants, your landlord must permit members of each co-tenant's immediate family to share the rental unit. And, if one or more of the co-tenants moves out, one or more additional occupants may move in, provided that the total number of tenants and additional occupants actually living in the unit (not counting the occupant's dependent children) does not exceed the total number of tenants listed on the lease or rental agreement. In addition, at least one tenant (or a tenant's spouse) must continue to occupy the unit as a primary residence.



If the tenant moves out, a roommate's right to stay usually ends. That's because a roommate's right to stay is contingent on the tenant's continued occupancy. (The only exception is for rent-regulated tenants, as explained in Section F, below.) If you are a roommate, ask the landlord to add you as a co-tenant on the lease. The landlord is legally entitled to say no, but if she consents you become entitled to remain in occupancy until the lease ends—even if your co-tenant moves out.

EXAMPLE: Artie, Max and Murphy sign a lease as co-tenants on a two-bedroom unit. Murphy quickly becomes disenchanted with his co-tenants' housekeeping habits and moves out. Artie and Max then invite Helga to move in, along with her daughter Brittany. Two months later, Daisy, Max's mom, moves in too. Their landlord may not object to this arrangement, even though there are now two more people living in the unit than signed the lease. Because Daisy is Max's immediate family member, she may share the unit with her son. And because the total number of tenants and occupants (Artie, Max and Helga) do not exceed three, the total number of tenants on the lease, Helga and Helga's dependent child Brittany may share the unit with Artie, Max and Daisy.

3. Definition of “Immediate Family” Can Vary

The Roommate Law permits tenants to share their units with members of their immediate family. But it doesn't define the term immediate family. For non-regulated units, courts look to the rental agreement for the meaning of the term “immediate family.” (See, for example, *Mitchell Gardens No. 1 Co-Op Corp. v. Cataldo*, 175 Misc.2d 493, 670 N.Y.S.2d 190 (App. T., 1998.)) So check before asking Auntie to move in with you, since the definition of immediate family in your lease or rental agreement term may exclude relatives such as siblings, cousins, aunts or uncles.



Be creative if your family member doesn't

qualify. While Auntie may not qualify as a family member, she may move in as a roommate if you are the only tenant on the lease. If you signed the lease with one or more co-tenants, Auntie may move in as a roommate as long as one of your co-tenants has moved out.

The term “tenant's immediate family member” is not defined in any of the four systems of rent regulation, either. However, there is some guidance in the newly amended rent regulations. Definitions for the terms “tenant's family member” and “owner's immediate family” now enumerate the identical set of relatives for each, as follows: husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law.

4. Primary Residence Requirement

To be entitled to share a rental unit with immediate family members or a roommate, you or your spouse must occupy your unit as a “primary residence.” (RPL § 235-f (3).) Tenants who spend most of their time at another residence aren't entitled to move non-tenants into their rental unit unless their lease permits it.

EXAMPLE: Phoebe signs a lease on a Manhattan apartment that limits occupancy of the unit “to the tenant, immediate family members and additional occupants as defined in and only in accordance with RPL Section 235-f.” Phoebe uses the apartment only when she's in town for a social event or appointment. Phoebe lives in a

large house in Greenwich, Connecticut, where she raises her family, pays taxes, registers her cars and votes. Phoebe asks Mike, her Manhattan landlord, for an extra set of keys for Millie, her new roommate. Mike says no, and reminds Phoebe that under the terms of her lease, she can only share the unit with family members. Since Phoebe's primary residence is in Connecticut, the Roommate Law does not cover her. So Mike can prohibit Millie from moving into Phoebe's unit.

To determine whether a rental unit is a tenant's primary residence, judges presiding over eviction proceedings look at the address listed on various records belonging to the tenant, including your driver's license, car registration, voter registration, credit card records, bank statements, utility bills and tax returns. Occupying the apartment for a total of less than 183 days of the most recent calendar year (except for temporary periods of relocation for military service, enrollment as a full-time student, employment requiring temporary relocation or hospitalization for medical treatment) may also be relevant, as it is in primary residence inquiries for rent-stabilized and rent-controlled tenants. (See, for example, 9 NYCRR 2520.6(u).)



Rent-stabilized and rent-controlled tenants who maintain a primary residence elsewhere are

subject to eviction. Rent-regulated tenants are legally required to use their apartments as their primary residence. Failure to do so may limit a rent-stabilized tenant's right to sublet. Worse, as discussed in Chapter 12, Section D, a landlord may terminate a rent-controlled tenant who doesn't occupy the rental unit as a primary residence. And a landlord may refuse to renew a rent-stabilized tenant's lease if the tenant actually lives somewhere else. For more information on eviction issues regarding the primary residence rule, go to Chapter 16, Section F.

C. Overcrowding Statutes Put Legal Limits on Occupancy

While it may sound as though an infinite number of family members and other occupants may share a rental unit, there are limits. State law permits landlords to restrict occupancy in order to comply with local laws, regulations or ordinances that deal with

health and safety. (RPL § 235-f(8).) Many localities have “overcrowding” ordinances that limit the number of people who can lawfully occupy a rental unit, based on the unit’s available square footage. For example, NYC Admin. Code § 27-2075 sets the maximum number of persons who may occupy an apartment by dividing the apartment’s total livable floor area by 80 square feet. And the Rochester Property Code § 90-8 requires every unit to have 120 square feet of habitable floor space for the first occupant, plus 70 square feet of habitable floor space for each additional occupant.

If your landlord claims that you’ve overcrowded your rental unit, contact your local code enforcement office for details about applicable overcrowding laws or ordinances.

D. Rent-Stabilized Tenants in NYC May Not Charge Roommates More Than Their Fair Share of Rent

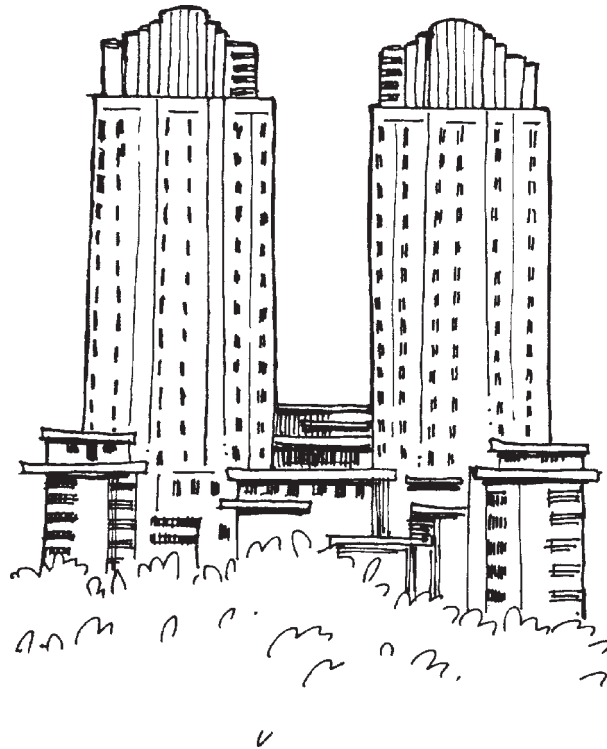
The Rent Stabilization Code now puts limits on the amount of rent tenants may charge their roommates. Effective December 2000, RSC § 2525.7(b) provides that tenants may not charge unrelated non-tenant

roommates a rent that exceeds the roommate’s proportionate share of the legal rent for the unit. The regulation shields roommates from profiteering tenants. It applies only in New York City; there’s no corresponding provision governing State (ETPA) rent-stabilized tenants.

A roommate’s proportionate share is calculated by dividing the legal regulated rent by the total number of tenants and occupants residing in the unit. The tenant’s spouse, family members and dependent children are not counted as occupants under this formula. The formula is based solely on this head count, and does not take into account the actual relative square footage or number of rooms in the unit occupied by the roommate.

Tenants who overcharge their roommates are subject to the rent overcharge penalties of the rent stabilization code that ordinarily apply to landlords. That means that your roommate can sue you in court or file a rent overcharge complaint with DHCR against you. If the overcharge is ruled “willful,” the subtenant can win triple damages from you. Rent overcharge complaints are covered in Chapter 4, Section H.

Rent-stabilized tenants who overcharge their subtenants are subject to eviction, as explained in Chapter 16, Section F.



E. Roommates May Trigger Rent Hike for Rent-Regulated Tenants

For rent-controlled and rent-stabilized tenants, apartment sharing can lead to paying more rent. If your apartment is rent-controlled, the landlord may apply for a rent increase if you take in an unrelated roommate (see Subsection 1, below). If your apartment is rent-stabilized, taking in a roommate won't trigger a rent increase unless you request (and the landlord consents) to having the co-tenant's name added to the rent-stabilized lease (see Subsection 2, below).

1. Rent-Controlled Tenancies

If your apartment is rent-controlled and you begin to share your apartment with a person who is not a member of your immediate family, your landlord may apply to the New York State Division of Housing and Community Renewal (DHCR) for a rent increase. (9 NYCRR § 2102.3(b)(3); 9 NYCRR §§ 2202.3(f)(1), 2202.6.) This rent increase is available to landlords of rent-controlled units within and outside New York City. The amount of the rent hike is determined by the agency and can be as high as 10%. The rent hike isn't permanent, though. It remains in effect only as long as the roommate or her replacement lives with you in the unit.

2. Rent-Stabilized Tenancies

For rent-stabilized tenants, asking your landlord to add your roommate to your lease as a co-tenant at renewal time can also result in a rent hike. According to the DHCR, when a new name is added to a rent-stabilized renewal lease, the landlord may issue a "vacancy" lease to you and your new co-tenant. That entitles the landlord to collect a hefty "vacancy" rent increase. (See, for example, *Matter of 427 Senator Street*, DHCR Admin. Rev. Dckt. No. GG 210085-RO (3/19/93).) For details on calculating vacancy rent hikes for rent-stabilized units, see Chapter 4, Section F.

F. How to Pass Rent-Regulated Units On to Loved Ones

Rent-controlled and rent-stabilized tenants may use an official DHCR form to tell the landlord about occupants with whom they share their apartments: "Notice To Owner Of Family Members Residing With The Named Tenant In The Apartment Who May Be Entitled To Succession Rights/Protection From Eviction" (DHCR Form RA-23.5). Appendix A explains how you can obtain this form. A sample appears below.

This notice includes information on people (other than the tenant) currently residing in the apartment, the date they began their primary residence in the apartment, their family relationship to the tenant and whether they are a senior citizen or disabled. The DHCR form is designed to be used by tenants. Owners may use it, too, but they can't ask you to complete it more than once in any 12-month period.

The form asks you to provide information that could entitle a family member or roommate to be named as a tenant on a renewal lease for a rent-stabilized unit, or become entitled to protection from eviction from a rent-controlled unit, under New York's succession laws. You must give a completed copy of the form to your landlord, get proof of mailing or receipt and keep a copy of the form and proof of mailing for yourself. Sending the notice to the landlord by certified mail, return receipt requested, will give you proof of mailing and possibly receipt, too, if the landlord signs for it.

If you don't fill out this notice, any occupant seeking succession rights to your rent-controlled or rent-stabilized unit has an "affirmative obligation" to establish such a right. If you don't fill out this notice, and you die, your loved one faces an uphill battle to stay on because the landlord will prefer the apartment to be non-regulated. To prove their case and avoid eviction, the occupant would need to provide documents proving his "family member" status, the date he moved into the rental unit, and that he used the unit as a primary residence for the applicable residency period, as explained in Chapter 16, Section I.



State of New York
Division of Housing and Community Renewal
 Office of Rent Administration
www.dhcr.state.ny.us

Gertz Plaza
 92-31 Union Hall St.
 Jamaica, NY 11433
 (718) 739-6400

**Notice To Owner Of Family Members Residing With The Named Tenant In The Apartment
 Who May Be Entitled To Succession Rights/Protection From Eviction**

Please check appropriate box below:

☐ Notice Requested By Owner

☐ Notice Submitted By Tenant

Mailing Address of Tenant:

Mailing Address of Owner/Agent:

Tenant's Name

Owner's/Agent's Name

Number/Street

Apt. No.

Number/Street

City, State, Zip Code

City, State, Zip Code

Subject Building (if different from tenant's mailing address):

Number and Street

Apt. No.

City, State, Zip Code

For the purpose of determining the right of a family member to a renewal lease or protection from eviction pursuant to rent regulations, as described on the reverse side of this form, the information below may be requested by owners, or provided by tenants, as follows:

- (1) by owners of rent stabilized apartments, at the time that a renewal lease is offered;
- (2) by owners of rent controlled apartments, at any time;
- (3) by tenants of rent stabilized and rent controlled apartments, at any time.

The following information may be requested by owners or provided by tenants:

- (1) the name of any person(s) other than the named tenant(s) who are residing in the apartment;
- (2) whether such person is a "family member"* of the tenant and if such person is, or upon the passage of the applicable period of required minimum residency, may become, a person entitled to be named as a tenant on a renewal lease (for rent stabilized apartments), or protection from eviction (for rent controlled apartments), and the date such person commenced primary residence with the tenant;
- (3) whether such person is a "senior citizen" or "disabled person."*

The tenant must provide the owner with the name of any person who has the right to be named as a tenant on a renewal lease, whether or not the owner requests the information.

A statement of general rights and obligations of tenants and owners, including renewal lease rights of stabilized tenants, can be found in the **Rent Stabilization Lease Rider For Apartment House Tenants Residing In New York City or in DHCR Fact Sheets**.

Instructions For Tenant

When a tenant provides a completed copy of this form to the owner, the tenant should obtain and keep proof thereof, including a completed copy of the form. The owner should also keep a completed copy of the form. A family member seeking to establish the right to a renewal lease or to protection from eviction upon the vacancy of the tenant may point to the submission of this form to show that this information was given to the owner. This may provide some evidence of the family member's succession rights; however, an owner may later challenge the statements made in this form. Moreover, an owner may use the information in this form if any later statements are inconsistent with the statements made in this form.

Statement of Tenant

Names of persons other than tenant(s) residing in the apartment.	Date of commencement of primary residence in the apartment by such persons.	Family relationship,* if any (If relationship is not listed under 3 (a) (i) on reverse side, but meets the requirements of 3 (a) (ii), indicate "other family member" or "OFM").	Check box if such persons are senior citizens and/or disabled persons.	
			Senior Citizen*	Disabled Person*
1. _____			☐	☐
2. _____			☐	☐
3. _____			☐	☐
4. _____			☐	☐

☐ For additional persons, check box and attach separate sheet.

Signature(s) of Tenant(s)

Date

* See definitions on reverse side of this form

RA-23.5 (5/99) INTERNET



Ending Privacy Invasions

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Next to disputes over rent or security deposits, one of the most common—and emotion-filled—misunderstandings between landlords and tenants involves conflicts between your landlord's right to enter the rental property and your right to be left alone at home. What is so unfortunate is that many of these problems are unnecessary. Most can be avoided if you adopt a fair understanding with your landlord, manager and building repair staff about the level of privacy you want and legally deserve.

This chapter covers tenants' rights to be free of unwarranted entries and intrusions by the landlord, manager, super and others.



Related topics covered in this book include:

- Lease and rental agreement provisions on access: Chapter 2
- How to fight landlord harassment: Chapter 11
- Landlord's right to terminate a lease or rental agreement for tenant unreasonably denying entry: Chapter 16.

A. General Rules of Entry

Many tenants are surprised to learn that there is no statewide statute that covers a landlord's right of entry. Rent stabilization and rent control laws give landlords a right of entry to rental property, as does New York City law. (See Sections B and C, below.) In addition, most leases and rental agreements give landlords a reasonable right to enter rented property under certain broad circumstances, such as in an emergency or to make repairs.

Lease and rental agreement provisions on landlords' access to rental property are routinely enforced by New York courts. That doesn't mean that your landlord can put something outrageous in your lease—for example, a statement that the landlord can enter your apartment whenever he feels like it. Tenants are, after all, entitled to privacy. To be enforceable, a lease or rental agreement entry clause must limit your landlord's right of entry to clear and legitimate business reasons and provide for reasonable notice of your landlord's intention to enter the unit.

Leases and rental agreements may legally permit the landlord and the landlord's employees and agents, such as the building super, to enter for one or more of the following reasons:

- in the event of an emergency or for an emergency repair
- to repair or maintain the rental unit
- to inspect the unit's physical condition, or
- to show the rental unit to prospective tenants, purchasers or mortgagees.

For non-emergencies, most leases and rental agreements require the landlord to provide the tenant with a minimum amount of notice before entering. As a general rule, at least 24 hours' notice is presumed to be reasonable for non-emergency access—for example, to make repairs or show the unit to prospective tenants.

1. Entry in Case of Emergency

Your landlord can enter your rental unit without giving notice to respond to a true emergency—such as a fire or gas leak—that threatens life or property if not corrected immediately.

Here are some examples of emergency situations when it would be legal to enter without giving you notice:

- Smoke is pouring out your window. The landlord calls the fire department and uses her master key—or even breaks in if necessary—to try to deal with the fire.
- Water is streaming out of the bottom of your front door. Most judges would agree that it's okay for the landlord to enter to find and repair the water leak.



- Screams come from the apartment next door. The super knocks on the apartment door, but no one answers. After calling the police, he uses his passkey to enter to see what's wrong.

On the other hand, your super's urge to repair a problem that's important but doesn't threaten life or property—say, a stopped-up drain that is not causing any damage—isn't a true emergency that would allow entry without proper notice.

laws, allow your landlord and a repairperson to enter your home to make necessary or agreed-upon repairs, alterations or improvements to the rental unit. If your landlord needs to make a repair—for example, to fix a broken oven, replace a floor tile or check the point of entry of a persistent ant infestation—your landlord should enter only at reasonable times and should give you a reasonable amount of notice, usually at least 24 hours.

Must Tenants Supply Keys to Privately Installed Locks?

For an extra level of protection, some tenants change the front door locks for their rental unit after they move in. They don't want the landlord or building staff to have unfettered access to their units. Though changing the locks may make you feel safer, be aware that doing so could lead to problems with your landlord.

Leases and rental agreements typically forbid tenants from re-keying, adding additional locks or installing a security system without the landlord's permission. Landlords usually condition any consent to change or add a lock upon your furnishing a duplicate key to the landlord. Courts have ruled that a tenant's duty to supply a duplicate key is a "substantial obligation" of the lease. (See, for example, *Lavanant v. Lovelace*, 71 Misc. 2d 974, 337 N.Y.S.2d 962 (App. Term, 2d Dep't 1972) aff'd 41 A.D.2d 905, 343 N.Y.S.2d 559 (1st Dep't 1973).) That means that your tenancy can be terminated if you refuse, after a demand, to give your landlord a copy of the key to your newly-installed lock. See Chapter 16, Section C, for details on evictions for violating a substantial obligation of the lease.

The state Multiple Dwelling Law (which applies to tenants in buildings with three or more units in New York City and Buffalo) also requires tenants to furnish duplicate keys to privately installed locks. (MDL § 51-c.) If you live in these cities, you must provide the landlord with a duplicate key even if your lease or rental agreement does not mandate it.

Heading Off Theft by Repair People

By planning ahead, you can minimize the chances that a repairperson will be tempted to steal from your apartment. Insist on plenty of notice of entry from your landlord—this will give you a chance to hide valuables. Better yet, try to arrange repairs or visits only when you are home. If that's not possible, ask that the manager accompany plumbers, electricians or other repair people who enter your apartment.

3. Entry to Inspect Unit

It's a good idea to let your landlord inspect your rental unit from time to time. That way, small problems can be found and corrected before they become big ones. Inspections may also be necessary if your landlord needs to investigate a problem that may not trouble you but affects other units in the building, such as an interior wall leak.

Many leases and rental agreements give the landlord a right to enter a tenant's unit—after giving reasonable notice—to inspect the unit's physical condition, either for a routine inspection or to evaluate a special problem. Rent control and rent stabilization laws also permit entry for this purpose as discussed below.



Don't let your landlord improperly use the right to inspect to harass or annoy you.

No rental unit should need inspecting more than once or twice a year—absent a very special reason—for example, to track down the source of a water leak or to check the point of entry of a persistent ant or rodent infestation. If your landlord asks to inspect your unit too frequently, it may constitute illegal trespass or harassment. Section G, below, reviews legal remedies for privacy violations. Chapter 11, Section C, discusses harassment.

2. Entry to Make Repairs

Most leases and rental agreements, as well as New York City law and rent control and rent stabilization

4. Entry to Show Property to Prospective Tenants, Buyers or Lenders

Most leases and rental agreements allow landlords to enter rented property to show it to prospective tenants toward the end of a tenancy, or to prospective purchasers or lenders if the landlord wishes to sell or refinance the property. Rent control and rent stabilization laws also permit entry for this purpose.

Maintenance While You're Away

Some leases and rental agreements have clauses that give landlords the right to enter the rental unit if you will be away for an extended time period, usually defined as two weeks or more. These clauses are intended to permit the landlord to maintain the property as necessary and to inspect for damage and needed repairs. For example, during a period of extreme cold, it makes sense to let your landlord check the pipes in your rental unit to make sure they haven't burst while you're away for winter vacation.

Without this type of clause in your lease or rental agreement, your landlord would only be on safe legal ground to enter your rental property during your extended absence if there were an immediate and genuine need to protect the property from damage. Of course, once the pipes have burst (ruining some of your possessions as well as the landlord's property), it's a bit late.



Refusing to provide access to your landlord in accordance with the terms of your lease or rental agreement can result in an eviction lawsuit. If the parameters of your landlord's entry rules are reasonable, you risk losing your rental if you refuse to abide by them (see Section D, below).

B. Rules of Entry for New York City Rental Property

New York City's Owner's Right of Access law (NYC Admin. Code § 27-2008) permits the owner, the owner's agents and employees to enter a tenant's rental unit for the purpose of:

- responding to emergencies
- making repairs or improvements required by law or code, and
- inspecting the rental unit to determine if it complies with applicable laws and codes.

This law gives your landlord access to your apartment if you have an oral rental agreement, or if your lease or rental agreement is silent on the subject.



NYC law does not require tenants to permit entry for the purpose of showing a rental unit to prospective tenants, purchasers or mortgagees. However, New York City tenants are required to permit entry for this purpose if 1) their lease or rental agreement authorizes it (see Section A, above), or 2) the unit is covered by rent control or rent stabilization law (see Section C, below).

Just because you live in New York City doesn't mean that your landlord can barge in at any hour of the day without prior notice. The NYC access law requires landlords to exercise their right of access at a "reasonable time and in a reasonable manner." A city regulation (28 RCNY § 25-101) helps flesh out the reasonableness requirement, as follows.

1. Emergency Repairs

Access for emergency repairs requires no advance notice to the tenant. Emergency repairs are those that are urgently needed to prevent injury or property damage, and include repairing gas leaks, leaking pipes, roofs, appliances and broken and dangerous ceiling conditions.

2. Repairs and Improvements

When entering for repairs or improvements, the landlord must give you at least one week's advance written notice. The notice should describe the nature of the repair or improvement your landlord plans to make.

Like most tenants, you probably expect your landlord to respond to repair requests within 24 to 72 hours after you've reported them to management. You may agree to provide access on far less notice than the one week that is legally required. But under this city law, you may insist on a full week's written notice before letting your landlord in to make needed repairs or improvements, if you so desire.

3. Inspections

Access for an inspection requires at least 24 hours' advance written notice to you. If you are rent-stabilized, your landlord must give at least five days' written notice of the inspection, so as to enable you to be present.

4. Day and Time of Entry

The landlord may enter your unit at any mutually convenient time. Except in emergencies, you may insist on providing access only between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). (28 RCNY § 25-101.) The choice is yours.

C. Rules of Entry for Rent-Regulated Property

Rent control and rent stabilization laws (9 NYCRR §§ 2104.2(f); 2204.2(a)(6); 2524.3(e), NYC Adm. Code § 26-408(a)(6)) require rent-regulated tenants throughout the state to provide access to landlords and their agents for the following purposes:

- to make necessary emergency repairs
- to make necessary repairs and improvements
- for apartment inspections, and
- to show the unit to prospective tenants, purchasers or mortgagees.

Rent-regulated tenants who unreasonably refuse to provide access to the landlord may be terminated. Chapter 16, Section F1, explains the default and termination notices that are required for refusal to provide access.



Rent-stabilized tenants in New York City must be given at least five days' advance written notice of any inspection or showing, to give the tenant a chance to be present at a mutually convenient time. (9 NYCRR § 2524.3(e).) While the NYC Rent Stabilization Code sets no minimum notice period for repairs, the City's access law, which also applies, does. Access for non-emergency repairs or improvements required by law requires at least one week's advance written notice to the tenant. The notice should describe the repair or improvement that the landlord plans to make (see Section B, above).

D. Penalties for Tenants Who Unreasonably Deny Entry

If you repeatedly refuse to let the landlord or her agents or employees enter your home, your landlord may be able to terminate your tenancy.

If you have a month-to-month tenancy, the landlord may end your tenancy by giving you the requisite termination notice (30 days in New York City and one month outside New York City). Chapter 14 explains how month-to-month tenancies terminate.

If you have a lease that gives the landlord a right of entry, your landlord may terminate your tenancy on the ground that you have breached a substantial obligation of the lease. Chapter 16 discusses termination on this ground and your right to prior notice that you have violated the lease.



For rent-controlled and rent-stabilized tenants, a refusal to provide access after proper notice violates rent control or rent stabilization laws and may entitle your landlord to evict you. The procedure for termination varies, depending on the applicable rent-regulatory system, as described in Chapter 16, Section B.



If you're an unregulated New York City tenant without an entry clause in your lease, your refusal to permit access for housing code-related repairs or inspections violates New York City law (see Section B, above). In some cases, a court will permit an eviction where a tenant violates a local law or regulation. If you do end up in court, be prepared to prove that you offered to provide access at a reasonable time, that your landlord didn't have a legitimate reason for entry or that you never received the requisite notice.

E. Entry by Others

This section describes situations when people besides your landlord, the landlord's agents or employees (such as municipal inspectors or the police) may want entry to your apartment.

1. Health, Safety or Building Inspections

If a health, safety or building inspector has a credible reason to suspect that your rental unit violates housing codes or local standards—for example, if your neighbor has complained that your 20 cats pose a

health hazard—they will usually knock on your door and ask permission to enter. Except in the case of genuine emergency, you have the right to say no.

Their next step will probably be to get a search warrant based on the information from your neighbor. The inspectors must first convince a judge that the source of their information—the neighbor—is reliable, and that there is a strong likelihood that public health or safety is at risk. Once you see a signed, recently issued warrant, you have to open up. Inspectors who believe that a tenant will refuse entry often bring along police officers who have the right to do whatever it takes to overcome your objections.

2. Police

Even the police may not enter your rental unit unless they can show you or your landlord a recently issued search or arrest warrant, signed by a judge. The police do not need a search warrant, however, if they need to enter to prevent a catastrophe, such as an explosion, if they are in hot pursuit of a fleeing criminal or need to prevent the imminent destruction of evidence of a significant offense.

F. Other Types of Invasions of Privacy

Entry to your home without your knowledge or consent isn't the only way your landlord can interfere with your privacy. This section discusses other ways that landlords can cross the line and explains your legal remedies.



Rent-regulated tenants who pay below-market rents are particularly vulnerable to privacy

invasions. If you sublet a rent-regulated apartment without your landlord's consent, or fail to occupy it as your primary residence, your landlord may be entitled to terminate your tenancy (Chapter 16 details these and other termination grounds.) Since landlords are entitled to fat rent increases when rent-regulated tenants move out, landlords have a financial incentive to ferret out illegal subtenants and non-primary residents.

1. Giving Information About You to Strangers

Strangers, including creditors, banks and prospective landlords may ask your landlord to provide credit or other information about you. Did you pay the rent

on time? Did you maintain the rental property? Cause any problems?

Basically, your landlord has a legal right to give truthful and relevant information about you to people and businesses who ask and have a legitimate reason to know—for example, your bank when you apply for a loan or a prospective landlord who wants a reference. If, however, your landlord gives out incorrect or irrelevant information—intentionally or otherwise—you can sue the landlord for damages if the person to whom the landlord discloses it relies on this information to take some action that negatively affects you. For example, if your landlord tells others that you have filed for bankruptcy (and this isn't true), you may sue her for defamation (libel or slander) if you are damaged as a result—for example, if you don't get a job. Section G, below, discusses legal remedies.

2. Mail Tampering

Your mail can reveal a lot about you—where you bank, shop and insure your car(s); the religious, political and philanthropic causes you support, and even what credit cards you carry. In many properties, landlords have access to tenant mail and packages. In smaller buildings, landlords may distribute all or some of the mail, while in high rises they have the passkey to lobby mail boxes. While most landlords wouldn't consider rifling through their tenants' mail, some do.

Under federal law, it is a crime for anyone to take a letter, postcard or package out of your mailbox before it is delivered to you with the intent to obstruct the letter, pry into your business or secrets or open, hide, or destroy your mail. (18 U.S.C. § 1702.) If you suspect that your landlord has been tampering with your mail, you may contact the U.S. Postal Inspection Service, the enforcement arm of the U.S. Postal Service at P.O. Box 509, New York, NY 10116-0555, tel. 212-330-3844. Alternatively, visit its website at www.usps.gov and check out the U.S. Postal Inspection Service Section on mail theft.

3. Videotaping

Landlords may legally videotape any of the common areas of the property, including lobbies, garages and public hallways. Landlords usually install video cameras because of legitimate security concerns, but

occasionally, tenants discover that their landlord or the police have installed a camera pointed at their apartment's entrance door. New York courts have okayed this type of video surveillance, concluding that it is not reasonable for tenants to expect privacy in the common areas of a rental building (besides, the camera records the same things that would be seen by a passerby in the hallway). The secret installation of a video camera in your apartment, however, is a clear invasion of privacy, for which you can bring a lawsuit for money damages. Section G, below, discusses legal remedies.

4. Credit Report Searches

When you were a prospective tenant, it was perfectly legal for your landlord to obtain your credit report to investigate your creditworthiness. But once you've moved in, the landlord needs a legitimate business purpose to obtain credit information. It is illegal for landlords to order credit checks on tenants for non-credit purposes, such as verifying an address. (*Ali v. Vikar Management Ltd.*, 994 F.Supp. 492 (S.D. N.Y., 1998).) The Manhattan landlord in this case ordered credit reports on rent-stabilized tenants whom he suspected of maintaining a primary residence elsewhere. Since rent laws required the landlord to renew the rent-stabilized tenants' leases without regard to the tenants' creditworthiness, the landlord had no legitimate reason to seek credit information.

G. Tenants' Remedies If a Landlord Acts Illegally

Talk to your landlord or manager if you feel that your privacy is being violated. Conscientious landlords will be receptive to your privacy concerns and will work out an acceptable compromise. If the friendly, informal approach doesn't work, write a formal complaint letter. If your landlord continues to violate your privacy and you can't reach a compromise, you may need to bring a lawsuit against the property owner and/or manager. If you can show a repeated pattern of illegal activity, or even one clear example of outrageous conduct, you may be able to win money damages or a rent abatement (an order from a judge directing the landlord to pay you a sum of money, representing the difference between the rent

you paid while the invasions took place minus the real value of your rental (with the privacy invasions)). If the situation gets really bad—that is, if the privacy invasions were continuous and completely unreasonable—you may be entitled to break the lease and move out. Examples would be a super using a pass key in a “peeping tom” situation or a manager who regularly rifled through the tenant's belongings while the tenant was work. This concept, known as constructive eviction, is discussed in Chapter 9, Section N, in terms of moving out because of unlivable physical conditions in the rental unit.

While there is no state or city law specifically aimed at safeguarding tenant privacy, depending on the circumstances, you may be able to recover damages on one or more of the following legal theories:

- trespass: entry without consent or proper authority
- breach of implied covenant of quiet enjoyment: interfering with your right to the undisturbed use of your home
- breach of the implied warranty of habitability: violating your reasonable expectation of privacy and right to exclusive possession (Chapter 9 explains the warranty of habitability and your legal options for landlord violations)
- infliction of emotional distress: any illegal act that the landlord intends to cause serious emotional consequences to the tenant
- violation of fair credit reporting laws: obtaining information from your credit report for non-credit purposes
- defamation: making an untrue statement about you to others that damages you, or
- unlawful eviction: changing the locks without a court order or removing you from the premises by force or threat of force.

These types of lawsuits are beyond the scope of this book and require expert legal advice. See Chapter 19 for advice on finding and working with a lawyer.



If your landlord or manager comes onto your property or into your home and harms you in any way, sexually harasses you, threatens you or damages any of your property, report the matter to the police, pronto. You may also consider seeing an attorney. ■



Landlord's Duty to Repair and Maintain the Premises

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 our home is your castle. That is, until the roof leaks, the place is overrun with cockroaches or there's no heat. Unresolved repair and maintenance problems can turn a perfect rental into a perfect hell. But fear not. Armed with the right legal information and strategies, you can prompt even the laziest (or cheapest) landlord into action.

This chapter begins by describing your legal right to a rental property that is structurally sound, in good repair and free of health hazards under the state's warranty of habitability law, state multiple dwelling laws and local housing maintenance codes. We explain how to effectively request repairs and maintenance and provide model letters you can send your landlord. And if your landlord doesn't meet his legal repair and maintenance duties, we'll introduce you to several tenant remedies designed to get results, including:

- reporting code violations
 - paying for repairs yourself and deducting the cost from your rent
 - withholding rent
 - suing the landlord for money damages
 - seeking a court-ordered repair order or rent reduction (known as a "rent abatement")
 - if you live in the New York metro area, asking the court to appoint an administrator to collect rents and make repairs in your landlord's place
 - if you are a rent-regulated tenant, seeking a rent reduction by filing a services complaint with the Division of Housing and Community Renewal (DHCR), or
 - moving out without notice.
- Raising a habitability defense in a nonpayment eviction proceeding: Chapter 15
 - Seeking damages for the landlord's breach of the warranty of habitability in an eviction proceeding: Chapters 15 and 16
 - Conducting a final inspection of the rental unit for cleaning and damage repair before moving out: Chapter 18
 - How to research state laws, local ordinances and court cases on landlord repair and maintenance responsibilities: Chapter 19.



Model Letters and Sample Forms in This Chapter

- Request for Repair or Maintenance
- Letter of Understanding Regarding Repairs
- Rent Withholding Letter
- Application For A Rent Reduction Based Upon Decreased Service(s)—Individual Apartment (DHCR Form RA-81)
- Application For A Rent Reduction Based Upon Decreased Building-Wide Services (DHCR Form RA-84)



Related topics in this book include:

- Understanding lease and rental agreement provisions for repair and maintenance: Chapter 2
- Determining a rent-regulated tenant's right to "base-date" services: Chapter 4
- Keeping track of the condition of the premises before and after move in with an Apartment Inspection Checklist: Chapter 6
- Understanding landlord rules regarding alterations and improvements: Chapter 6
- Noise conditions that may violate the warranty of habitability: Chapter 10
- Landlord's responsibility to install and maintain security devices: Chapter 13

A. Your Right to a Safe and Livable Home Under the Warranty of Habitability

The cornerstone of your landlord's responsibility for repairing and maintaining your rental unit and the common areas of the property is a legal doctrine known as the warranty of habitability. The warranty is a landlord promise, implied by law, that the premises are livable, usable and safe—and will stay that way throughout the rental term. (RPL § 235-b.) The warranty protects tenants from dangerous conditions and gives you a legal remedy if there is a lack of essential services. If your landlord violates the warranty of habitability, you can sue him in court for money damages (often awarded in the form of a rent reduction, called an abatement), punitive damages (money awards meant to punish a landlord for outrageous or egregious violations), attorney fees, interest and court costs. Or you can withhold rent, wait for your landlord to sue you for nonpayment of rent and then countersue for money damages, attorney fees, interest and court costs.

We begin this chapter by examining the content and scope of the warranty. Later on, we explain what you can do to secure your rights under the warranty by withholding rent, going to court or (if you'd just as soon move out) ending your tenancy without liability for rent owed under the balance of your lease.



Rent-regulated tenants have another option.

They can apply to the DHCR, the state agency that enforces the rent laws, for a rent reduction based on decreased services to their apartment or building. If the DHCR finds that the landlord has cut services, it lowers the tenant's rent until the landlord restores services. We discuss the pros and cons of seeking a DHCR rent reduction in Section M, below.

Brief History of the Warranty of Habitability

Under early common law, when most tenants were farmers, a tenant's obligation to pay rent was completely independent of the condition of any structures built on the land. It was the land—not the condition of its structures—that was important. With the growth of cities and the shift away from an agricultural economy, the condition of the structures became more important as tenants needed to rent shelter, not land. Yet, landlords continued to have no obligation to deliver or keep the premises in good repair. A “buyer beware” rule applied to tenants when it came to rental premises. (See *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 418 N.Y.S.2d 310, 391 N.E.2d 1288 (1979) cert. denied, 444 U.S. 992, 100 S. Ct. 523, 62 L. Ed. 2d 421 (1979) (hereafter, “*Park West*”).)

In the early 1970s, judicial decisions began to reject the harsh rule of “buyer beware.” One by one, judges began to impose an implied warranty of habitability when a landlord rents premises for residential use. In 1975, a statutory warranty of habitability was signed into law in New York. According to its Senate sponsor, the purpose of the warranty was to modify the “contractual relationship” between the landlord and tenant so as to put the tenant on equal legal footing with the landlord. (1975 Legis. Ann., p. 315 (memo of Sen. H. Douglas Barclay).)

1. Basic Definition of Habitable Housing

Landlords are required to offer livable, usable and safe premises when they originally rent a unit, and to maintain it in that condition throughout the rental term. The landlord's responsibility to provide habitable housing generally includes:

- keeping basic structural elements of the building, including floors, stairs, walls and roofs, safe and intact
- maintaining all common areas, such as hallways and stairwells, in a safe and clean condition
- keeping electrical, plumbing, sanitary, heating, ventilating and air conditioning systems and elevators operating safely
- supplying cold and hot water and heat in reasonable amounts at reasonable times
- providing trash receptacles and arranging for their removal, and
- exterminating infestations of rodents and other vermin.

While state and local building codes help define what it means for housing to be habitable, court decisions define the scope and contours of the concept.

2. Who's Affected by the Warranty of Habitability?

The warranty of habitability applies to every landlord and every tenant who rents residential premises in New York. (RPL § 235-b (1).) It doesn't matter how few (or how many) units are in the building in which you live, or the town where you live.

Almost every type of residential tenant is protected by the warranty of habitability, including tenants who rent condos or co-ops from their owners and tenants in government-owned or publicly subsidized housing. New York courts have refused to extend the warranty of habitability to only two types of tenants. So-called “holdover” tenants, who remain in a unit without the landlord's permission after the lease ends, are usually not protected by the warranty: (*Dean v. Korkidis*, NYLJ, 3/18/92, p. 26, col. 1 (App. Term, 2d Dep't).) Also unprotected are tenants who move out but continue to pay rent, such as tenants who sublet their unit or assign their lease. A tenant must be in actual occupancy of the unit to be protected by the warranty. (*Halkedis v. Two East End Ave. Apartment Corp.*, 161 A.D.2d 281, 555 N.Y.S.2d



54 (1st Dep't 1990).) The warranty of habitability also applies to subtenants who may assert a breach against the overtenant.

3. Key Concepts of the Warranty of Habitability

Almost four decades of judicial decisions that interpret the warranty of habitability have helped shape the contours of the warranty. Here are some key concepts that tenants should understand:

- The warranty applies to conditions caused by “latent” (that is, hidden or dormant) defects in the property, as well as those that are plainly visible or discoverable. That means that your landlord can’t avoid responsibility for problems such as a concealed water leak that couldn’t be seen or foreseen when the tenancy began. (*Park West*, see cite in sidebar above.)
- The warranty also applies to defects caused by conditions that are beyond the landlord’s control, such as acts of third parties and natural disasters, such as a fire or hurricane. (*Department of Housing Preservation and Development of the City of New York v. Sartor*, 109 A.D.2d 665, 487 N.Y.S.2d 1 (1st Dep’t 1985).)
- The warranty of habitability doesn’t require your landlord to provide a rental unit that’s in “perfect” or “aesthetically pleasing condition.” (*Park West*, see cite above.) It simply needs to be fit, livable and safe.
- Conditions that are caused by a tenant’s misconduct will not trigger a breach of the warranty.

(RPL § 226-b (1).) If you overflow your tub and cause the wood flooring in your apartment to buckle to the point of being a trip hazard, for example, you can’t claim a breach of the warranty.

- Tenants who fail to notify the landlord about a claimed defective condition, or refuse to let the landlord inspect or fix it, can’t seek the protections of the warranty of habitability. (*Ansonia Assoc. v. Moan*, NYLJ, 8/21/92, p. 24, col. 3 (Civ. Ct., N.Y. County).)

Although each case turns on its own facts, you’ll get a general idea of the conditions that courts have claimed to violate the warranty of habitability by reading Section D, below.

4. You Can’t Give Up Your Rights to a Habitable Rental Unit

Some landlords have attempted to get around the implied warranty of habitability by advancing one or both of the following theories:

- **Tenant waiver.** Your landlord may try to tell you that if the housing was substandard when your lease or rental agreement began (yet you rented the place anyway), or became so during your tenancy (and you stayed on), you gave up the protections of the warranty.
- **Landlord disclaimer.** Some lease or rental agreements include a clause stating that the landlord simply will not satisfy the implied warranty’s requirements. The landlord might try to tell you that because you signed a lease with this type of clause, you’ve effectively absolved the landlord from responsibility.

Don’t believe either theory. Neither a so-called tenant waiver (at the beginning of the tenancy or during its life) nor a disclaimer in a lease or rental agreement can relieve your landlord of the responsibility to provide housing that begins—and remains—fit and habitable.



If you live in a building with three or more units, your landlord may not delegate her duty to comply with New York State or New York City housing maintenance codes to you, either, including the duty to keep your rental unit and building in good repair. By implication, if you live in a one- or two-family dwelling, the landlord may delegate her responsibility to comply with these housing maintenance codes.

B. Your Rights Under State and Local Housing Codes

State and local housing codes set specific minimum construction requirements for room sizes, light, ventilation, water and electrical service, heat and fire protection. They mandate specific minimum security devices (detailed in Chapter 13) and lay out certain ongoing maintenance requirements. State and local codes also have a catch-all provision that prohibits “public nuisances.” A public nuisance is something that is dangerous to human life, detrimental to health or immoral—for example, overcrowding a room with occupants, providing insufficient ventilation or illumination, inadequate sewage or plumbing facilities or using the premises for prostitution. (NY Multiple Dwelling Law § 309.)

Legally speaking, buildings with three or more residential units constitute a “multiple dwelling.” If you live in a building with three or more units, your landlord must comply with specific requirements set out in two New York State laws:

- Multiple Dwelling Law (MDL) which covers buildings in Buffalo and New York City, and
- Multiple Residence Law (MRL) which covers buildings in smaller cities and all towns and villages in New York.

In addition to these state multiple dwelling laws, you may also be protected by local housing codes. For example, the New York City Housing Maintenance Code (HMC), which applies to one- and two-family properties as well as multiple dwellings, sets minimum standards for health and safety, fire protection, light and ventilation, cleanliness, repairs and maintenance. (The HMC is part of the New York City Administrative Code, starting at § 27-2001.) If you live outside New York City, contact your municipal clerk to find out if there are any housing codes that apply to your rental unit, and get a copy.

The most sweeping obligation under the state multiple dwelling laws, as well as under the New York City Housing Maintenance Code, is the obligation that your landlord keep the property in “good repair.” (MDL § 78; MRL § 174; HMC § 27-2005(a).) This repair obligation extends to every unit in the building, as well as to common corridors, stairwells, courtyards, parking lots or other common areas in the building or on the property lot.

One- and two-family properties are not subject to state multiple dwelling laws, but may be covered under local housing codes. (These properties are

covered by the warranty of habitability, though, which applies to all rental units.) It is not unusual for local codes to permit landlords of one- and two-family properties to transfer their maintenance and repair responsibilities to the tenant, under the terms of a lease or rental agreement. For example, this is permitted in New York City, under the Housing Maintenance Code. (HMC § 27-2005(c).) If local code is silent on the issue, the presumption is that it's okay for the landlord to delegate his repair and maintenance responsibilities to the tenant in one- or two-family dwellings.

1. Enforcement of Housing Codes

New York does not have one state agency that enforces state multiple dwelling laws. That job is left to local building, health and fire departments, which are authorized to enforce state multiple dwelling laws and any applicable local housing codes. In New York City, the Department of Housing Preservation and Development (HPD) enforces the state Multiple Dwelling Law as well as the City's Housing Maintenance Code.

Local inspectors discover code violations through routine checks or when they inspect in response to complaints from tenants in the building or neighboring homeowners or tenants. Local authorities may issue violations against rental buildings that fail to comply with state multiple dwelling laws and/or local housing codes—for example, due to lack of adequate heat, trash in the hallways, hazardous electrical wiring, a leaking roof, broken toilet or other defective conditions.

The local enforcement agency typically requires the property owner to remedy all violations found within a given time period. The amount of time your landlord is given to correct a violation depends on how hazardous it is. For example, a landlord would be required to quickly repair a fire stair door that doesn't close properly, since it poses a fire hazard, but would get more time to repair a minor leak. If the landlord refuses to make repairs within the time allowed, the municipality may bring a civil lawsuit against the landlord. A failure to comply with certain cited violations of state and local housing laws is a criminal misdemeanor punishable by hefty fines or even imprisonment. In some cases, local officials may require that the building be vacated, with the landlord providing tenants with temporary housing, until the violation is corrected.

All Violations Are Not Created Equal

Most local code enforcement offices rank housing code violations by the degree of hazard posed to the property's occupants. For example, the New York City Department of Housing Preservation and Development (HPD), the agency that enforces the multiple dwelling law and the HMC in New York City, has sorted possible violations into three classifications:

Class "A" Non-Hazardous. These include minor leaks, chipping or peeling paint when no children under the age of six live in the home, or a lack of signs designating floor numbers. An owner has 90 days to correct an "A" violation.

Class "B" Hazardous. These include orders requiring public doors to be self-closing, adequate lighting in public areas, posting of a Certificate of Occupancy or removal of vermin. An owner has 30 days to correct a B violation.

Class "C" Immediately Hazardous. These cover dangerous conditions such as inadequate fire exits, rodents, lead-based paint where a child under six resides, lack of heat, hot water, electricity or gas. An owner has 24 hours to correct a C violation. If the owner fails to comply with emergency C violations such as lack of heat or hot water, HPD is authorized to initiate corrective action or emergency repairs.

Rent-Impairing Violations. A "rent impairing" violation refers to a condition in a multiple dwelling that constitutes a fire hazard or a serious threat to the life, health or safety of occupants. In New York City and Buffalo, it's up to local code enforcement offices to classify which violations are rent-impairing and to make a full list of possible violations available to the public. (MDL § 302-a). In New York City, all Class "C" and some Class "B" violations are rent-impairing violations.



Uncorrected rent-impairing violations may disqualify your landlord from certain rent increases.

A New York City rent-controlled tenant's maximum base rent may not be increased unless the landlord certifies that he has corrected all rent-impairing violations against the building and 80% of the non-rent-impairing violations recorded against the property. (NYC Admin. Code § 26-405(h)(6).) Outstanding rent-impairing violations may also disqualify a landlord from collecting a major capital improvement rent hike. For more information on rent increase rules, see Chapter 4.

2. Legal Remedies for Housing Code Violations

If your landlord fails to remedy a housing code violation, you have a variety of legal options to choose from, such as seeking a repair order in court or withholding rent, if the violation makes the premises uninhabitable. The best course of action for you depends on how hazardous the condition is, how many other tenants in your building are affected and whether you are willing to go to court. Section G, below, provides details.

3. Housing Codes and the Warranty of Habitability

In New York, the warranty of habitability is independent of housing maintenance codes, such as minimum heating requirements. So, if there's a condition in your apartment that violates an applicable housing code, that condition does not necessarily constitute an automatic breach of the warranty. (*Park West*, see cite above.) Under this approach, the legal question is not merely whether the building meets state and local housing codes, but whether it is fit, habitable and safe. Although a breach of the housing code does not automatically mean that a unit is uninhabitable (nor does compliance alone mean that it is habitable), usually a serious housing code violation will also qualify as a breach of the warranty of habitability.

While there is considerable overlap, the distinction between conditions that violate housing maintenance codes versus those that violate the warranty of habitability is an important one that affects your legal options. Any violation of the warranty of habitability entitles you to withhold rent and seek money damages against the landlord. But not every housing code violation placed against your building or rental unit permits rent withholding or a claim for damages. In some instances, a code violation by the landlord only entitles you to obtain an order from a court or agency directing the landlord to correct the violation within a prescribed time frame or pay a fine—payable to the municipality, not you.

EXAMPLE: The elevator in Russell's ten-story building was old, but managed to pass the city-mandated annual elevator inspection test. Tenants in the building claimed that elevator service had gotten slow and unreliable, and began to withhold rent. Unable to afford a new elevator, Russell

sued the tenants for unpaid rent. He assumed that since his elevator satisfied local building codes, the tenants were wrong to withhold rent. Russell was dismayed when the judge awarded a rent abatement to the tenants. Under case law, a decrease in elevator service is a breach of the warranty of habitability—even if the elevator complies with applicable codes.

C. Landlord Promises for Repairs and Services

You can hold your landlord to a repair or maintenance promise he made in the lease or rental agreement—even if the work is minor and not required under the warranty of habitability or by state or local housing codes. Your landlord's ads and brochures can also create special repair and maintenance obligations, as can promises the landlord made while showing the unit.

1. Promises in the Lease or Rental Agreement

When it comes to legal responsibility for repairs, your own lease or rental agreement is often just as important (or more so) than the warranty of habitability and building codes. If your written agreement describes or lists items such as drapes, washing machines, swimming pools, saunas, parking places, intercoms or dishwashers, the landlord must provide them in decent repair. And the promise to provide these items carries with it the implied promise to maintain them. On the other hand, if your lease explicitly says that you are responsible for the repair and maintenance of any appliances (see “Who's Responsible for Appliance Repair?” in Chapter 2, Section B), your landlord is usually off the hook, unless it's a rent-stabilized property.

If your landlord violates an express or implied promise relating to the condition of the premises, you may sue the landlord (usually in small claims court), or countersue in housing court, for money damages for breach of contract. We discuss these legal remedies in Section G, below.

2. Promises in Ads and Brochures

If an advertisement for your unit described or listed a feature, such as a cable TV hookup or a laundry room, especially if the feature is emphasized, your

landlord must follow through with these promises, even if your written rental agreement is silent on the subject. Unless your lease says otherwise, your landlord must repair items such as dishwashers, clothes washers and dryers, garbage disposals, microwave ovens, security gates and jacuzzis if they break through no fault of your own.

EXAMPLE: Tina sees Joel's ad for an apartment, which says “heated swimming pool.” After Tina moves in, Joel stops heating the pool regularly, because his utility costs have risen. Joel has violated his promise to keep the pool heated.

3. Implied Promises

Suppose your rental agreement doesn't mention a garbage disposal and neither did any of the property's advertising. The landlord's rental agent never pointed it out when showing the unit. But there is a garbage disposal and it was working when you moved in. Now the garbage disposal is broken—does the landlord have to fix it? Many courts will hold the landlord legally responsible for maintaining all significant aspects of the rental unit. If you rent a unit that already has certain features—light fixtures that work, doors that open and close smoothly, faucets that don't leak, tile that doesn't fall off the wall—many judges reason that your landlord has made an implied contract to keep them in workable order throughout the tenancy.

The flip side of this principle is that when you have paid for a hamburger, the waiter—your landlord—doesn't have to deliver a steak. In other words, if the rental was shabby when you moved in and your landlord never gave you any reason to believe that it would be spruced up, you have no legal right to demand improvements—unless, of course, you can point to health hazards or code violations. As when you buy secondhand goods “as is” for a low price, legally you are stuck with the deal.

Another factor that is evidence of an implied contract is your landlord's past conduct. If she has consistently fixed or maintained a particular feature of your rental, such as a dishwasher, she has an implied obligation to continue doing so.

EXAMPLE: Julia's apartment has a built-in dishwasher. When she rented the apartment, neither the lease nor the landlord said anything about the

dishwasher or who was responsible for repairing it. The dishwasher has broken down a few times and whenever Julia asked Brian to fix it, he did. By doing so, Brian has established a practice that he—not Julia, the tenant—is responsible for repairing the dishwasher.

D. Your Right to Specific Services, Repairs and Maintenance

In this section, we do our best to flesh out the types of services, repairs and maintenance you are entitled to receive under:

- the warranty of habitability (which applies to all units)
- state multiple dwelling laws (which apply to apartments in buildings with three or more units), and
- the New York City Housing Maintenance Code (which applies to all NYC units, although its obligations may be transferred to the tenant of a one- or two-family dwelling under the lease or rental agreement).



A landlord may not reduce or suspend any base-date services that were furnished to a rent-regulated unit when it first became subject to rent control or rent stabilization, unless the service reduction has been approved by the DHCR, the state agency that enforces the rent laws. For rent-controlled units, these are known as “essential” services, and for rent-stabilized units, they are called “required” services. Such services may include repairs, painting and maintenance; the furnishing of light, heat, hot and cold water; telephone and elevator service; kitchen, bath and laundry appliances, such as refrigerators, stoves, dishwashers and air conditioners; and amenities such as mail delivery, linen service, janitor service and garbage removal. For details, contact the DHCR. (See “More Information on State and Local Housing Maintenance Codes,” below.) Landlords who reduce essential or required services to a rent-regulated unit are subject to rent cuts. Section L, below, explains how to seek a rent reduction from DHCR for a service cut.

Section 1, below, looks at essential services such as heat and hot water. Your landlord’s repair and maintenance responsibilities inside the rental unit, like plumbing repairs, are covered in Section 2.

Common area repairs and maintenance are examined in Section 3, and Section 4 looks at amenities like pools and parking spaces. As you read this chapter, keep in mind that repair and maintenance rules aren’t always clear-cut. For example, state multiple dwelling laws require your landlord to keep rental units in “good repair”—a term that may have a different meaning for landlords than it does for tenants. Also note that this list isn’t exhaustive. Your lease or rental agreement may obligate your landlord to provide more repairs and services than the minimum standards outlined below.

More Information on State and Local Housing Maintenance Codes

For more information on the Multiple Dwelling Law and the Multiple Residence Law, call your municipal code enforcement office. The laws may be viewed or downloaded from the New York State Assembly website (www.assembly.state.ny.us). In addition, most public libraries have copies of the Multiple Dwelling Law and the Multiple Residence Law in the reference section under New York Laws.

For more information on the services landlords must provide to rent-stabilized and rent-controlled units, call the State Division of Housing and Community Renewal’s (DHCR) Infoline at 718-739-6400. Also helpful is DHCR Fact Sheet #3, “Required and Essential Services,” which may be ordered by phone, downloaded from the DHCR website (www.dhcr.state.ny.us) or obtained by visiting one of the DHCR borough or district offices (see Appendix A for addresses and phone numbers).



New York City tenants may inquire about code-required repairs and maintenance (and report code violations in their buildings or apartments). You can call the Department of Housing Preservation and Development’s Office of Code Enforcement central complaint line at 212-824-4328 (for the hearing impaired, the TTY number is 212-863-5504) or visit HPD’s website (www.nyc.gov/html/hpd). Most New York City public libraries have a copy of the Housing Maintenance Code (it’s part of the New York City Administrative Code). The HMC may also be viewed or downloaded from the New York City Rent Guidelines Board website (www.housingnyc.com).

1. Essential Services

This section lists services that are essential to the habitability of your unit, such as heat and water. We also include minimum standards for these services, where applicable, under state and local housing maintenance codes.

a. General Principles: Electricity, Running Water, Heat and Garbage Removal

Under the warranty of habitability, landlords must provide the following essential services to their rental properties.

- **Electricity.** Your landlord must supply electricity to a rental property's common areas and mechanical systems, and must supply electrical fixtures and outlets in rental units. Electricity to rental units may be supplied directly by the landlord or by a utility. Local housing and electrical codes may set minimum standards as to the number of electrical outlets that must be supplied to each room. New York City landlords must provide and maintain light fixtures in every room of every rental unit (including the bathroom and kitchen), and a sufficient number of outlets to comply with the electrical code. (HMC § 27-2037.)
- **Hot and cold running water.** All rental units must be supplied with running water in the kitchen and bathrooms. Hot water must be supplied at all times in New York City, and between the hours of 6:00 a.m. and midnight outside New York City. (MDL § 75; MRL § 170.)



New York City sets minimum temperatures for hot water.

Between the hours of 6:00 a.m. and midnight, hot water must be supplied at a constant minimum temperature of 120 degrees Fahrenheit. During these hours, baths and showers equipped with mixing valves may produce a discharge temperature less than 120 degrees Fahrenheit but in no event less than 110 degrees. (HMC § 27-2031.)

- **Heat during cold months.** The multiple dwelling laws require landlords to provide heat to tenants between October 1st and May 31st each year. How much heat? Between the hours of 6:00 a.m. and 10:00 p.m., whenever the outside temperature drops below 55 degrees Fahrenheit, landlords must keep the temperature in their

tenant's units to at least 68 degrees Fahrenheit. (MDL § 79; MRL § 173.) This is the minimum—local laws may set higher standards. If you're located in New York City or Buffalo, there's a nighttime standard, too: Between midnight and 6:00 a.m., your unit must be kept at a minimum temperature of 55 degrees Fahrenheit, when the outside temperature dips below 40 degrees Fahrenheit. (MDL § 79; HMC § 27-2029.)

- **Garbage removal.** The common areas of the property must be kept sanitary. In buildings with three or more units, your landlord must provide receptacles for garbage (and for recycling, where required) and empty them on a daily basis. Receptacles must be large enough to hold a day's worth of refuse. (MRL § 174; MDL § 81.) All New York City landlords must provide recycling receptacles for the use of tenants, place garbage out for collection at the appointed times and, in multiple dwellings, post a notice telling tenants of the hours and method of waste collection for the building. (HMC § 27-2021; § 27-2022.)

b. Janitorial Services

In buildings with three or more units, your landlord must keep clean every part of the building, including roofs, yards, courts and alleys. (MDL § 78, MRL § 174.) Some New York City and Buffalo landlords are legally required to hire a live-in super or move into the building themselves. It depends on the size and location of the property you live in.

For NYC buildings with *nine or more* units, the landlord must either:

- live in the building and perform janitorial services
- hire a super who lives in the building or who lives within 200 feet or one block of the building (whichever is greater) to do the work, or
- hire a 24-hour-a-day janitorial service for the building. (HMC § 27-2053.)

In Buffalo, for buildings *with 13 or more units* the landlord must either:

- live in the building and perform janitorial services, or
- provide a janitor who lives in the building or lives within 200 feet of the building. (MDL § 83.)

c. Extermination Services

All rental units must be kept free of vermin and rodents. Housing maintenance codes are more specific. They require your landlord to keep your unit free of

rodents, such as mice and rats, and infestation by insects like ants, bedbugs, bees, beetles, cockroaches, houseflies, mosquitoes, moths, silverfish and spiders. (MRL § 174; MDL § 78; HMC § 27-2018.) A licensed exterminator need not visit your building at any set time interval (say, monthly), but the landlord must exterminate active infestations in tenants' units and in common areas.

What about the occasional cockroach? An appeals court ruled that the warranty of habitability wasn't violated by the presence of one or more roaches on 30 or 40 occasions during a tenant's two-year occupancy, where extermination services weren't requested by the tenant. (*Solow v. Wellner*, 86 N.Y.2d 582, 635 N.Y.S.2d 132, 658 N.E.2d 1005 (1995) (hereafter, "*Solow*").)



If an infestation is caused by your bad house-keeping, you could end up footing the extermination bill. Landlords aren't required to pay for repairs that are directly attributable to a tenant's misconduct, as explained in Section F, below.

2. Required Repairs and Maintenance in Your Unit

What work must your landlord do inside your unit? In this section, we look at what's required (and what's not) under state multiple dwelling laws, the warranty of habitability and the New York City Housing Maintenance Code.

a. Painting

There's no state law obligating landlords to repaint units every so often. But local law may require your landlord to repaint your rental unit's interior walls at certain intervals. For example, in New York City buildings with three or more units, landlords must completely repaint their units once every three years. (HMC § 27-2013.) Those who don't do so can get hit with a housing violation or a rent abatement, since ignoring local painting ordinances is also a breach of the warranty of habitability. (*DeVito v. Potts*, NYLJ, 3/4/92, p. 25, col. 2 (Civ. Ct. N.Y. County).)

If there's no local repainting requirement where you live, your landlord need only paint when there's a habitability problem—for example, to fix water-damaged walls or repair paint that's so thick around a window that the window can't be opened.



Lead-based paint poses special hazards to tenants and responsibilities for landlords. Landlords are legally required to warn prospective tenants about possible lead paint risks. (See Chapter 2 for a full discussion of your landlord's lead-paint disclosure responsibilities.) The disclosure requirements apply to tenants with and without children. The existence of lead-based paint in apartments where small children reside violates the warranty of habitability. (*German v. Federal Home Loan Mortg. Corp.*, 885 F. Supp. 537 (S.D. N.Y. 1995) clarified on reargument in part, 896 F. Supp. 1385 (S.D. N.Y. 1995).) For more information on lead hazards and your landlord's abatement responsibilities, see Section E1, below.

b. Plumbing Repairs

Your landlord is required to keep your plumbing fixtures operational and plumbing lines in good repair. (MDL § 78; MRL § 174.) Defective plumbing lines and fixtures can breach the warranty of habitability. For example, a toilet that doesn't flush violates the warranty (*City of New York v. Rodriguez*, 117 Misc. 2d 986, 461 N.Y.S.2d 149 (App. Term, 1st Dep't, 1983)), as does an inoperative shower.

Defective waste lines threaten health and safety. When a malfunctioning septic system caused a spillage of raw sewage along the interior and exterior of one rental unit, this condition was found to trigger a breach of the warranty of habitability. (*People ex rel. Higgins v. Peranzo*, 179 A.D.2d 871, 579 N.Y.S.2d 453 (3d Dep't 1992).)

What about tenant-caused plumbing blockages? Small toys and household objects can easily lodge in a drain line. The warranty of habitability law does not apply to conditions caused by a tenant's misconduct. If you ask the landlord to remove the blockage, you may end up with the repair bill.

c. Leaks and Water Damage

The general rule is that you are entitled to a water-tight rental unit. Your landlord is required by the multiple dwelling laws to keep roofs and exterior walls in good repair. (MDL § 78; MRL § 174.) But leaks happen—even at the best-kept buildings.

The proper course of action depends on the circumstances. When a roof fails, sending water cascading through the building each time it rains, the landlord is expected to act immediately to fix the

roof and to start making damaged units livable again. But if a corner of your ceiling is stained by a slow, occasional trickle of water from the roof in January, it may be reasonable for your landlord to postpone the roof repair until spring—when the job can get done right.

Sometimes, careless neighbors can cause leaks and water damage in your unit. Bathtub overflows, for instance, can seriously damage units on lower floors. Even though the damage is not your landlord's fault, your landlord is nevertheless responsible—as one Yonkers landlord learned the hard way.

EXAMPLE: On several occasions, a tenant's basement unit had been flooded by water coming from a problem tenant on the third floor who intentionally filled up her kitchen sink so that the water would overflow onto the kitchen floor. Each time the water worked its way down to the basement unit and damaged the tenant's property. The landlord knew that his third-floor tenant was responsible for the flooding, but did nothing to have the disruptive tenant legally evicted. A court ordered the landlord to pay to the basement tenant \$500 for water-damaged property, \$300 for the inconvenience and aggravation and \$500 in punitive damages. (*Benitez v. Restifo*, NYLJ, 3/27/96, p. 36, col. 3 (City Ct., Yonkers).)

Minor, temporary leaks do not violate the warranty of habitability. For example, a judge rejected a tenant's claim that a constant drip onto his bedroom window-sill, lasting between one and two and one-half weeks, affected habitability, even though the drip disrupted the tenant's sleep and kept him from using the entire windowsill. (*Solow*, see cite above.)

d. Smoke Detectors

Smoke detectors save lives and property. All units in a multiple dwelling must be equipped with at least one battery-operated smoke detector. (MRL § 15; Buffalo Code Ch. 395; HMC § 27-2045.) The device must be installed so that its alarm is clearly audible in every bedroom. More than one smoke detector may be required in a unit, depending on its size and layout.

When you move in, all smoke detectors must be equipped with batteries and operational. During your occupancy, it's your responsibility to maintain them. That means testing the unit on a regular basis

(weekly, suggests the New York City Fire Department) and replacing batteries when needed. Tenants must replace smoke detectors if one is stolen, removed, missing or stops working.

e. Air Conditioning

New York summers can be brutally hot. Unfortunately, landlords aren't required under the warranty of habitability or housing codes to air condition rental units or the common halls and lobbies of a building. Your lease or rental agreement may require the landlord to provide air conditioning in your unit. If there was an air conditioning unit in your unit when you moved in, your landlord has an implied obligation to keep it working, unless you agreed otherwise.

f. Flooring

The flooring in all units must be maintained in safe condition, which means that there can't be any trip hazards. The multiple dwelling laws require that any carpeting or vinyl, ceramic or wood flooring in your apartment be kept in good repair. (MDL § 78; MRL § 174.) All carpets and rugs in the common areas of your building must be cleaned by the owner at least once a year or as much as the local code enforcement agency deems necessary. (MDL § 81(3).)

Because broken floor tiles present a hazardous condition, they also violate the warranty of habitability for all units. (*Pleasant East Assoc. v. Cabera*, 125 Misc.2d 877, 480 N.Y.S.2d 693 (Civ. Ct., N.Y. County, 1984).) Torn carpeting may also breach the warranty of habitability because it poses a trip hazard to occupants. Water-damaged carpeting may pose a hazard if mold begins to form (see the discussion of mold in Section E3, below.)

What about flooring that has grown old and tired-looking? Floor tiles that are discolored from age or other reasons don't violate the warranty, so long as they are safe to walk on. The same goes for worn carpeting. (*Solow*, see cite above.)

g. Window Blinds and Drapes

Landlords are not legally required to install window blinds or curtains in a rental unit. Moreover, defective window blinds don't violate the warranty of habitability. (*Solow*, see cite above.)

h. Anti-Fall Window Guards

There's no state law that requires window guards—safety devices that attach to the outside of your

windows to prevent children from falling out. But in some localities, landlords are required to install window guards in units where young children live. In New York City, for instance, landlords must install window guards in every window of a unit in which a child under the age of 11 resides, or at the request of a tenant. (NYC Admin. Code § 17-123.) Chapter 2 has more on this requirement.

A landlord violation of an ordinance or local law requiring the installation of window guards in units where there are young children can lead to fines and penalties, and is a breach of the warranty of habitability.

i. Too Much Artificial Light

Tourists might like New York City's bright lights and neon glare. But tenants don't—especially if the lights are shining right into their bedroom window. Illumination from a light source outside your window may violate the warranty of habitability if it's intrusive enough. In order to constitute a breach of the warranty of habitability, the offensive light source must cause a substantial and serious interference with your use of the premises. If you can draw your curtains to shut light out, it's probably not substantial enough to breach the warranty.

EXAMPLE: In one case, a tenant withheld rent claiming that an illuminated awning from a commercial street-level store directly below and outside the tenant's bedroom window caused physical ailments and claustrophobia. The court found no breach of warranty, stating: "people who live in a crowded urban environment must expect less than pristine, bucolic conditions and have universally been held to expect a certain 'annoyance factor' not experienced by their country cousins[.]" (*169 East 69th Street Owners Corp., v. Leland*, 594 N.Y.S.2d 531 (N.Y. Civ. Ct. 1992)). The court viewed the disruption experienced by the tenant as minimal and foreseeable, "given the location of the apartment directly above commercial space facing a busy City thoroughfare."

j. Insufficient Natural Light and Ventilation

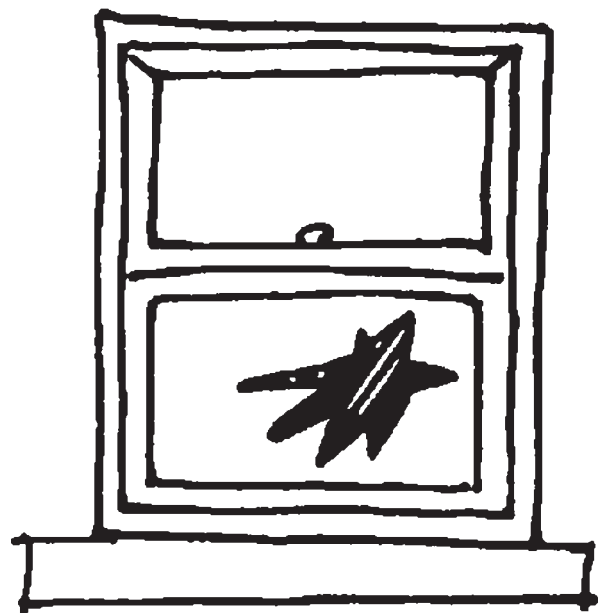
The multiple dwelling law specifies minimum standards for light and ventilation within a unit. Local building codes usually set standards as to minimum

window sizes in relationship to the unit's square footage. And in some areas, windowless kitchens and baths are required to have mechanical ventilation systems.

What happens when the landlord reduces the amount of light or ventilation in an apartment? It depends. In one case, a Manhattan tenant's only bedroom window was closed off when a building was constructed on an adjacent lot. A court ruled that the loss of the window deprived the tenant of necessary light and ventilation, made the bedroom unfit for the use reasonably intended by the parties, and therefore violated the warranty of habitability. (*Department of Housing Preservation and Development of the City of New York v. Sartor*, 109 A.D.2d 665, 487 N.Y.S.2d 1 (1st Dep't 1985).)

k. Operational Windows

Landlords are required to keep windows and their locks operational. Broken glass violates state multiple dwelling laws and the New York City Housing Maintenance Code. A tenant is responsible for a broken window only if she or her guest intentionally or carelessly broke it. If a burglar, vandal or neighborhood child breaks a window, however, your landlord is responsible for fixing it.



3. Required Repairs and Maintenance in Building's Common Areas

The multiple dwelling laws require your landlord to keep your building's corridors, stairwells, lobby, laundry room and other common areas, including exterior lots and courtyards, in "good repair." (MDL § 78; MRL § 174.) That includes repairing paint, wall-paper and carpeting when needed, replacing burned-out light bulbs and fixing broken light fixtures.

a. General Principles

The warranty of habitability applies to "all areas used in ... common with other tenants or residents." (RPL § 235-b.) Courts have found a breach of the warranty where:

- Tenants were denied use of "environmental common areas," including a park and playground, due to the landlord's extensive construction work. (*Forest Hills No. 1 Co. v. Schimmel*, 110 Misc.2d, 429, 440 N.Y.S.2d 471 (Civ. Ct., Queens County, 1981).)
- Tenants were denied use of an apartment complex swimming pool. (*Tower Club v. Matheny*, NYLJ, 8/8/90, p. 23, col. 3 (Just. Ct., Village of Tuckahoe).)
- Fire-damaged common areas went unrepaired. (*55 Midlock Tenants Corp. v. Nesselson*, NYLJ, 4/29/92, p. 22, col. 6 (Civ. Ct., N.Y. County).)
- Mailboxes were in disrepair or missing and garbage receptacles were removed from common areas. (*Mali Realty Corp. v. Rivera*, NYLJ, 8/9/95, p. 24, col. 4 (Civ.Ct., Kings County).)

b. Elevator Service

Landlords must keep all elevators in good repair. (MRL § 174; MDL § 78) and satisfy any local municipal elevator inspections and tests. New York City landlords must have a current maintenance contract with a private elevator repair company. (HMC § 27-998; § 27-1000.)

c. Snow Removal

Ordinances in some localities require the landlord to remove snow and ice from sidewalks. For example, New York City owners must shovel within four hours after the snow has stopped falling. If ice on a sidewalk is frozen so hard that it can't be removed, the owner may place sand, sawdust or other suitable material on the sidewalk within four hours of the end of the

snowfall. If it snows between 9 p.m. and 7 a.m., the four-hour rule doesn't apply. (HMC § 16-123.)

4. Amenities

The multiple dwelling laws deal with basic living conditions only, such as heat, water and plumbing. They don't cover "amenities"—features that are not essential but make living a little easier. Examples are swimming pools, saunas, parking places or concierge service.

Does the warranty of habitability cover amenities? A group of Manhattan tenants in a luxury high-rise claimed that package room service at their building had become inefficient, and that the service reduction was a breach of the warranty. An appeals court ruled that amenities and conveniences, such as package room service, are not within the intended scope of the warranty of habitability. (*Solow*, see cite above.)

Although state laws clearly do not require your landlord to furnish amenities, a landlord who does may nevertheless be legally required to maintain or repair them. The reason for this is simple: By providing amenities, the law concludes a promise to maintain them. This promise might be express (in the lease) or implied, as explained in Section C, above.

E. Protection From Environmental Hazards

Part of your landlord's responsibility to provide housing that meets minimum health and safety standards includes taking steps to ensure that you and your family aren't sickened by exposure to serious environmental health hazards. This section explains landlords' obligations with respect to three common hazards—lead, asbestos and mold—and offers suggestions on how to spot problem areas and work with the landlord to protect yourself.

1. Lead

Exposure to lead-based paint or lead-contaminated drinking water may lead to serious health problems, particularly in children. Brain damage, attention disorders and hyperactivity have all been associated with lead poisoning. Prior to 1950, lead was a common ingredient in residential interior and exterior paints.

Lead was used in pigments to make brighter, more durable paint.

Since 1960, New York City has banned the use of lead paint on the interior surfaces of residential buildings. (NYC Admin. Code § 27-2056.) Since 1970, New York State has prohibited the use of “leaded paint” on any interior surface, windowsill, window frame or porch of a residential unit, and has set limits on the amount of lead which may be found in drinking water. (Pub. Health L. §§ 1372, 1373.) (The federal government didn’t get around to banning the sale of lead-based paint for residential use until 1978.) Pre-1960 New York City housing, as well as all pre-1970 housing elsewhere in the State, is almost certain to have lead-based paint—unless the owner completely removed it since then.

Landlords are required to disclose lead-paint hazards to new and renewal tenants. Lead disclosure requirements are discussed in Chapter 2. This section reviews lead abatement laws and regulations that apply to New York rental properties, explains how to recognize a lead hazard in your home and discusses your options if you find any lead hazards.

a. State Laws on Lead

New York State does not require landlords to inspect their properties for lead, nor does it routinely send inspectors to rental properties to test for the presence of lead. At the state level, inspections are triggered solely by reports of elevated blood levels in children. State law requires health providers to screen children between six months and six years of age and pregnant women for lead. (10 NYCRR Part 67.) In addition, nursery and elementary schools require enrollees to be lead-screened by a health professional. (Pub. Health L. § 1370-c, d and e.) All lead-screening results are reported to the Department of Health.



If you don’t have health insurance, or your insurance does not cover lead-screening blood tests, contact your county health department. Local health departments are required to offer blood lead screening tests to children and pregnant women. The cost is based on your household income. You can find the telephone number for your county health department in the Yellow Pages.

If a screening indicates lead contamination, the Department of Health orders an inspection of your rental unit for lead hazards. If you live in a municipality

that has enacted a lead hazard law, such as New York City, a local authority conducts the inspection. If you live in a municipality that doesn’t have any lead hazard ordinances (such as many rural communities upstate), the inspection is carried out by the Department of Health.

Inspectors look for peeling, cracking, blistering, flaking or chipping lead-based paint, and lead-contaminated drinking water or soil. (10 NYCRR Part 67-2.8.) If a lead hazard is found, the inspector issues a violation ordering the landlord to abate the hazard by using a prescribed lead abatement method. Landlords who fail to abate a lead hazard after getting a violation may be fined up to \$2,500. The state also has the power to appoint a receiver for your property who will do the work at the landlord’s expense. For details on state laws and programs on lead, see “More Information: Lead Hazard Resources,” below.

b. New York City Lead Poisoning Prevention Law

New York City’s Lead Poisoning and Prevention Law (NYC Admin. Code § 27-2056 and following) presumes that all paint in a unit of a multiple dwelling built before 1960 is lead-based paint. The landlord may rebut this presumption by showing otherwise.



This NYC law also requires landlord to notify tenants about lead hazards when tenants sign new and renewal leases. The tenant notification requirements are discussed in Chapter 2.

If a child under six lives in your rental unit (or visits regularly), the landlord must perform an annual visual inspection of your unit for “lead-based paint hazards,” defined as “peeling paint” (including curling, cracking, scaling, flaking, blistering, chopping, chalking or loose paint or other surface material) or “deteriorated subsurfaces” (including painted wood or plaster that has been subject to moisture or disturbance). If your landlord doesn’t voluntarily inspect your unit, call HPD, which must inspect rental units for lead hazards in response to tenant complaints.

The New York City law requires landlords to voluntarily correct any lead-based paint hazards identified by visual inspection. Landlords must also correct lead paint violations issued by HPD within 21 days. Time extensions are available if the tenant won’t give the landlord access right away. If the landlord fails to complete the work within 21 days (and fails

to get an extension), the landlord must follow a more stringent and expensive set of work practices prescribed by the NYC Department of Health within 15 days.

Upon completion of violation-related correction work, the landlord must have a “surface dust test” performed by a certified tester. If the lead content of the dust in your apartment is below a certain level, the landlord may certify to HPD that the hazardous condition has been corrected.

The civil penalty for landlords who fail to correct a violation is \$250 day. Bigger fines are levied against landlords who falsely certify that the work has been done.

c. Federal Law Requires Prior Notification About Hazardous Renovations

When your landlord or a contractor renovates occupied rental units or common areas in housing built before 1978, the U.S. Environmental Protection Agency regulations require that current tenants receive lead hazard information before the renovation begins. (40 CFR Part 745.80-88). The information (a federal booklet called “Protect Your Family from Lead in Your Home”) is the same one you should have received when you signed your lease. It may seem silly to be given this information twice, but at the very least, seeing (and hopefully reading) the booklet again will serve to remind you that you must take precautions when lead dust is likely to be in the air.

d. Recognizing Lead Hazards in Your Home

If your landlord has tested for lead and has certified that your rental unit is lead-free, you can skip this section. However, most landlords have not tested every apartment they own for lead unless compelled to do so as a prerequisite to insurance coverage or a loan. There are several clues as to whether or not there is lead in or around your home, and ways that you (or, ideally your landlord) can find out for sure.



Don't disturb lead paint in older buildings. If

your rental unit was built before lead paint was banned, do not sand walls, windowsills, doors or other surfaces—it risks releasing lead into the air (possible even from paint several layers down) creating the very hazards you are attempting to avoid.

Your first step should be to determine the age of the building. If the landlord doesn't know or won't

say, contact your local building department and ask to see the building's original construction permit or certificate of occupancy. If the document is not on file, you'll need to estimate the structure's age.

As noted above, a New York City building built before 1960 is almost certain to have lead-based paint, as will properties constructed outside of New York City before 1970. While there are many inexpensive home test kits sold to detect lead in paint, dust and soil, the EPA does not recommend them due to their unreliability. An alternative is to collect paint, dust or soil samples yourself and send them to an EPA-recognized laboratory (a list is available from EPA by calling 800-424-LEAD). If the samples contain high levels of lead, the EPA recommends having a certified lead-based paint professional do a risk assessment of your home. Unfortunately, the cost is high—a few hundred dollars at least. If you (and possibly other tenants) choose to do an assessment, you'll be in a good position to compel the landlord to contain the risk. Even if you do not get professional's opinion, but are fairly sure that lead is present in your home, you can still act prudently on your own to reduce the risk.



If you and a child under six live in a pre-1960 rental building with three or more units, New

York City law presumes that your unit contains lead-based paint—you don't need to test it. If the paint is peeling or deteriorated, call HPD to schedule an inspection. If a lead hazard is found, the HPD issues a violation ordering the landlord to take corrective action, as explained above.

e. When There's Lead in Your Home

You don't need to automatically reject or move out of a rental unit that contains lead. Remember, only peeling, blistering, deteriorated or cracked lead-based paint is the culprit. If you discover hazardous lead, your landlord's legal responsibilities—and your legal options—depend on whether or not your rental unit is occupied by a small child, and in some cases, whether that child has tested positive for elevated levels of lead in her blood.

Landlords are not legally required to abate or contain lead paint in rental units occupied by tenants without children. If the paint is in good condition, your best bet is to leave lead-based paint undisturbed. If the paint is peeling, chipping or deteriorated, how-

ever, notify your landlord immediately. That triggers the landlord's obligation to act under the warranty of habitability and under the multiple dwelling laws, if the property has three or more units, as explained above.

If a blood-screening test has revealed that your child's blood has an elevated lead level, the health professional who administered the test is required by state law to pass that information along to your local health department. If an inspection reveals lead, your landlord will be ordered to abate the hazard using special precautions dictated by the health department. Like most parents, you won't want to wait until your child is lead-poisoned before getting help. If lead-based paint in your apartment is peeling, cracking or deteriorated, take a proactive approach and request

an inspection from your local health department (or local code enforcement agency, if your locality has enacted a lead prevention law). New York City tenants should contact HPD (see "More Information: Lead Hazard Resources," below). That should trigger an inspection and, if hazardous lead is present, the issuance of a violation ordering your landlord to take immediate corrective action.



If a child's blood level is very high, see a lawyer.

If your landlord knew about the lead hazards but didn't do anything to correct them (or did the wrong thing), you may be able to sue your landlord on behalf of your child for money damages. A lawyer who specializes in personal injury cases should be able to tell you whether you have a case.

More Information: Lead Hazard Resources

Information on the evaluation and control of lead hazards may be obtained from the following federal, state and New York City resources.

National Lead Information Center (NLIC). The NLIC, which operates under a contract with the U.S. Environmental Protection Agency (EPA), with funding from EPA, the Centers for Disease Control and Prevention and the Department of Housing and Urban Development, provides information about lead hazards and their prevention. To ask questions, receive a general information packet or for detailed information, you may call 800-424-LEAD, write to NLIC at 801 Roeder Road, Suite 600, Silver Spring, MD 20910 or visit its website (www.epa.gov/lead/nlic.htm).

HUD. The U.S. Department of Housing and Urban Development has issued a useful booklet entitled "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," which may be obtained by calling the NLIC (above). For the most recent interpretations of federal law, go to the HUD Lead Office site at www.hud.gov/offices/lead. HUD also maintains a "Lead Listing" of names, addresses and phone numbers of trained lead paint contractors for testing and abatement in New York. Call 888-LEAD-LIST or access the list on the Web at www.leadlisting.org.

New York State Department of Health. This agency's publications on lead hazards are aimed at physicians, not consumers. If you have a specific question, you may call the State Health Department at 800-456-1158 or visit its website at www.health.state.ny.us.

New York City Health Department Lead Poisoning Prevention Hotline. This Hotline provides educational information on childhood lead poisoning prevention, assistance in obtaining medical consultations, publications and monthly workshops on safe work practices and interim lead controls. Call 212-BAN-LEAD (226-5323).

New York City Department of Housing Preservation and Development (HPD). To request information or an inspection of a residence with peeling paint hazards in a building constructed before 1960 in which a child under six years of age resides, contact the HPD's Abatement Safety Unit at 212-676-6355.

New York City Department of Health Lead Abatement Safety Unit. To file complaints about work procedures during lead abatements ordered by the New York City Department of Health or by HPD, call 212-824-4328.

Section G, below, discusses your legal remedies if your landlord refuses to respond to your complaints about deteriorated lead-based paint or a lead-paint violation order. These options include moving out, getting a court order directing your landlord to act and suing the landlord for a rent reduction and money damages under the warranty of habitability.

2. Asbestos

Exposure to asbestos has long been linked to an increased risk of cancer. Rental properties built before the mid-1970s often contain asbestos insulation around heating systems, in ceilings and in other areas. Until 1981, asbestos was also widely used in other building materials, such as vinyl flooring and tiles.

Asbestos that is intact (or covered up) is generally not a problem and the current wisdom is to leave it in place but monitor it for signs of deterioration. However, asbestos that has begun to break down and enter the air—for example, when it is disturbed during maintenance or renovation work—can become a significant health problem to people who breathe it. As a result, federal and state laws require landlords to take special precautions before undertaking renovation or demolition work in buildings with asbestos-containing materials.

In this section, we review your landlord's asbestos-related responsibilities and what to do if you suspect exposure to asbestos in your home.

a. Landlord Responsibilities

No testing for asbestos is legally required under federal, state or New York City law. Nor is there any requirement that your landlord remove or contain any intact asbestos known to exist in your building. The asbestos laws kick in whenever a repair, renovation or demolition project at the property requires the landlord to remove, disturb, repair, encapsulate or enclose any amount of asbestos. (15 U.S.C. § 2641; 12 NYCRR Part 56; NYC Local Law 76 of 1985.) For example, your landlord must follow the law when a job affects asbestos-containing pipe covering, boiler covering, sprayed-on insulation, roofing, siding or vinyl-asbestos tile.

The laws require your landlord to:

- notify certain government agencies before the job starts
- notify affected tenants at least ten days before the job starts. At minimum, affected tenants are

those living on the same floor as the asbestos project, or one floor above or below the project.

- use workers and contractors who meet State training and certification requirements, and
- follow required work site standards and procedures relating to asbestos handling and disposal and air quality monitoring.

b. Dealing With Asbestos in Your Home

Landlords are not required to remove intact asbestos in your home. If, however, asbestos-containing pipe covering, insulation, ceiling material or floor tiles begin to disintegrate, notify your landlord immediately (and follow up with a letter). A sample appears in Section F1, below. If your landlord does not take action, request an inspection from one of the government agencies listed below (see “More Information: Asbestos Resources”).

Since asbestos is a known carcinogen, courts have found a violation of the warranty of habitability where there is proof of asbestos dust or asbestos that's “friable,” or crumbly, (which could become airborne) in the tenant's apartment or in the building's ventilation system. In addition to ordering the landlord to take corrective action, a court may order a rent reduction. In one case, asbestos dust in a unit's bathroom ventilation system led to a 10% rent abatement, and asbestos dust in a closet led to 5% abatement. (*Ansonia Assoc. v. Moan*, NYLJ, 8/21/92, p. 24, col. 3 (Civ. Ct. N.Y. County).)

More Information: Asbestos Resources

New York State Department of Health. To ask questions, report an asbestos hazard outside New York City or to order a publication entitled “Asbestos in Your Home,” prepared by the American Lung Association, the Consumer Product Safety Commission and the United States Environmental Protection Agency, call the State Health Department at 800-456-1158 or visit its website at www.health.state.ny.us.

New York City Department of Environmental Protection. To ask questions or report an asbestos hazard in New York City call 718-DEP-HELP (337-4357), 24 hours a day, seven days a week.

3. Mold

Just when you thought you understood the risks posed by asbestos and lead, in comes the next big indoor environmental pollutant: mold. Mold can grow on virtually any moist substance, including wood, paper and carpet. Most forms of mold are harmless, like the kind that grows on your shower curtain. Yet exposure to certain mold spores may trigger allergic reactions, infections and toxic reactions in susceptible tenants.

While molds have existed longer than mankind, modern construction methods have had the unintended effect of creating a hospitable environment for mold to flourish indoors. Better building insulation keeps cold winter air out, but can seal in moisture from uncured building materials, roof leaks and broken pipes. Mold can be found in older buildings, as well, if water-damaged walls, floors or carpeting go undiscovered or unfixed and stay damp.

Mold contamination in residential properties has resulted in several big lawsuits claiming damages for personal injuries and property damage. While highly publicized suits have been filed against developers in California and Texas, similar cases are quietly pending far closer to home. For example, a lawsuit brought by the tenants of Manhattan's Henry Philips Plaza South claimed that exposure to toxic mold had caused severe personal injuries—it settled for \$1.17 million.

Currently, there are no federal, state or New York City regulations defining which molds are harmful or what air concentrations of mold pose a threat to health. Nor are there any prescribed remediation methods. Nevertheless, landlords are increasingly finding that they must rebut the presumption that the mere presence of mold renders an apartment uninhabitable. (See for example *Clarendon Corp. v. Barnett*, NYLJ, July 28, 1999, p.25, col. 5 (Civ. Ct., Kings County); *Northwood Village, Inc. v. Curet*, NYLJ, May 6, 1998, p. 34, col. 4 (Dist. Ct., Suffolk County). In both cases, the tenant alleged a variety of apartment conditions that violated the warranty of habitability, in addition to mold and mildew.)

More Information: Mold Hazards

The following government agencies have more information on mold hazards.

U.S. Environmental Protection Agency (EPA). The EPA has several publications about mold. The latest, "Mold Remediation in Schools and Commercial Buildings" (Pub. # EPA 402-K-01-001, March 2001), is also the most comprehensive. (Although not written specifically for residential buildings, much of the information and practical tips are relevant.) To have a printed version mailed or faxed to you, contact the National Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH 42419 (800-490-9198 or 513-489-8695 (fax)). You can also download the publication from the EPA website (www.epa.gov/iaq/molds/index.html). The website also contains several relevant articles, including "Introduction to Molds," "Basic Mold Cleanup," "Ten Things You Should Know About Mold" and links to mold-related resources at other government and university websites.

New York City Department of Health (DOH). DOH first issued "Guidelines on Assessment and Remediation of Fungi in Indoor Environments" in 1993, in response to mold growth problems discovered in several New York City buildings. The current guidelines, revised and expanded in November 2000, focus on mold contamination of building components such as walls, ventilation systems and support beams that are chronically moist or water damaged. The guidelines are intended for use by building engineers and management, but are available to the general public. You can get a copy of the guidelines by contacting the DOH Bureau of Environmental & Occupational Disease Epidemiology, 125 Worth Street, New York, NY 10007, 212-788-4290. The guidelines may be also be viewed or downloaded from the DOH's website (www.ci.nyc.ny.us).

F. Tenant Repair and Maintenance Obligations

Landlords are not the only ones who are obligated to repair and maintain the rental premises. Tenants also have responsibilities, which arise under ancient law, modern housing codes and the lease or rental agreement

1. Common Law Duty to Avoid Waste

Tenants have an implied obligation to protect the premises from becoming damaged or destroyed and to preserve it for the landlord. This is the concept of “waste,” developed under early English common law. It occurs when you, a family member or one of your guests:

- intentionally damage the premises—for example, by punching a hole through a wall
- negligently damage the unit—for example, by letting your Great Dane scratch walls or soil carpets
- permit the unit to be damaged by the elements—say by failing to fix or notify the landlord about a broken window
- perform alterations that change the essential character of the premises or reduce its value—such as by adding a wall to create an extra bedroom or removing a closet without the landlord’s permission. (Tenant alterations are discussed in Chapter 6, Section F.)

Landlords may sue tenants who permit or commit waste for compensatory damages, and, in some cases, for the tenant’s removal. (RPAPL § § 801, 815.) In addition, most modern leases contain a clause that permits termination if you let the rental unit become deteriorated or destroyed. See Chapter 2 for details on typical lease clauses; and Chapter 16 for termination grounds and procedures.

2. Tenant Duties Under Modern Housing Codes

State and local housing and maintenance codes also address the age-old duty to avoid waste by making tenants responsible for violations in rental units and common areas of the building when the violations are:

- caused by the willful act of the tenant, a guest, or a member of the tenant’s family or household, or

- the result of the gross negligence, neglect or abuse of the property by the tenant, a guest or a member of the tenant’s family or household. (See HMC § 27-2006(a)(1)-(2).)

In addition to an obligation to keep the premises undamaged and not destroyed, state and most local housing maintenance codes require tenants keep their rental units clean and sanitary. Under the multiple dwelling laws and the HMC, your responsibilities include:

- keeping your rental unit clean and free from vermin, dirt, filth and anything else that endangers life or health
- not keeping garbage or trash in your apartment for so long as to create a public nuisance, and
- placing garbage and trash only in the receptacles or compactor trash chutes provided by the landlord. (MDL 81).

Local housing maintenance codes may include additional obligations. For example, under the HMC § 27-2007, tenants shall not:

- remove, disable or prop open any self-closing door device which is required by law to be self-closing, such as a stairwell door in a common area
- obstruct access to any public hall or fire escape—for example, with a baby carriage, bike or potted plant
- remove or disable any shower head installed by the landlord, such as a water-saving shower head, or
- unreasonably refuse to afford access to the landlord to make repairs or improvements required under the HMC.

3. Duties Arising Under the Lease or Rental Agreement

Your lease or rental agreement most likely obligates you to certain repairs or maintenance, such as:

- taking “good care” of the rental unit during your tenancy and not damaging it, and
- restoring and repairing the rental unit to its original condition before you leave, except for ordinary wear and tear that may occur during your tenancy.

In addition, most leases and rental agreements require tenants to notify the landlord of repair problems or defective conditions. And even if it’s not a lease requirement, notification is a condition for

exercising any of your repair and maintenance legal remedies, such as rent withholding, as explained in Section J, below.

If your dwelling becomes uninhabitable due to your failure to keep up your end of the bargain, you will have a difficult, if not impossible, time convincing a judge that you are not a suitable candidate for eviction and the repair bill. (If you don't pay, the landlord can deduct the expense from your security deposit.) To protect yourself from this outcome, review your lease or rental agreement to see whether you are obligated to maintain the dwelling unit or, instead, are directed to notify the landlord of needed repairs. Most leases and written rental agreements make the tenant financially responsible for repair of damage caused by the tenant's negligence or misuse. That means that if you or your friends or family cause damage—for example, a broken window, a toilet clogged with children's toys or a trash compactor that no longer works because your spouse overloaded it—it's your responsibility to make the repairs or to reimburse the landlord for doing so. If you refuse to repair or pay for the damage you caused, the lease or rental agreement may authorize your landlord to add the repair costs to your rent bill as "additional rent." Like regular rent, if you refuse to pay additional rent, the landlord may bring a nonpayment eviction proceeding against you. Or, if you've already moved out, the landlord can sue in small claims court for the cost of the repairs. Chapter 18 discusses small claims court.

G. How to Get Action From Your Landlord

Knowing that you have a legal right to repairs and maintenance and getting them are, obviously, horses of very different colors. A lot depends on the attitude of your landlord. Here are some strategies to maximize your chances of getting quick results to your repair and maintenance requests.

1. Put All Repair Requests in Writing

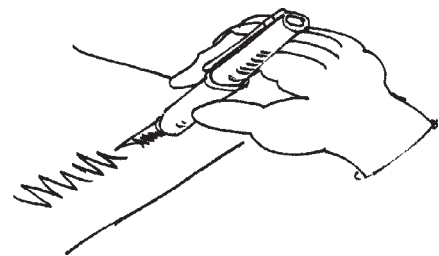
By far the best approach is to put every repair and maintenance request in writing, keeping a copy for your files. You may want to call your landlord, manager or super first, especially for urgent problems, but be sure to follow up with a written request.

Written communications to your landlord are important because they:

- are far more likely to be taken seriously than face-to-face conversations or phone calls, because it's clear to the landlord you're keeping a record of your requests
- are less likely to be forgotten or misunderstood
- satisfy the legal requirement that you give your landlord notice of any defective conditions and a reasonable opportunity to fix a problem before you withhold rent or exercise other legal rights (discussed below), and
- serve as potential evidence in case you ever need to prove that the serious problems with your unit were the subject of repeated repair requests.

In your request, be as specific as possible regarding the problem, its effect on you, what you want done and when. For example, if the thermostat on your heater is always finicky and often doesn't function at all, explain that you have been without heat during the last two days during which the nighttime temperature was below freezing—don't simply say "the heat needs to be fixed." If the problem poses a health or safety threat, such as a broken front door lock or loose step, say so and ask for it to be fixed immediately. Responsible landlords will respond quickly to genuinely dangerous, as opposed to merely inconvenient, situations. Finally, be sure to note the date of the request and how many requests, if any, have preceded this one.

If your landlord provides a repair request form, use it. If not, do your own (see the Model Request for Repair or Maintenance, shown below). Always make a copy of your request, note when and how you delivered it (via the doorman, for instance, or by mail) and keep it in a safe place in your files.



Model Request for Repair or Maintenance

To: Billy Higgins
Property Manager
300 West 55th Street
NY, NY 10019

From: Amanda Cohen
300 West 55th Street, Apt. 17K

Re: Roof leak

Date: March 10, 200x

As I mentioned to you on the phone yesterday, on March 9, 200x, I noticed dark stains on the ceilings in the bedroom and bathroom of my apartment. These stains are moist and appear to be the result of the recent heavy rains. I would very much appreciate if you would promptly look into the apparent rook leak. If the leak continues, my property may be damaged and these rooms may become unsafe or unusable. Please inspect my apartment today and call me at work (555-4200) to let me know the source of the leak and what steps you plan to take to fix the problem before it gets worse.

Thank you very much for your attention to this problem. I hope to hear from you soon and expect that the situation will be promptly corrected.

Very truly yours,
Amanda Cohen
Amanda Cohen

2. Deliver Your Repair Request to the Landlord

If your landlord has an on-site superintendent or manager, deliver your repair request personally. If you mail it, consider sending it certified (return receipt requested) or use a delivery service (such as FedEx) that will acknowledge receipt. Although taking steps to verify delivery requires more effort and costs more, it has two major advantages over regular mail:

- it will get the landlord's attention and highlight the fact that you are serious about your request, and

- the signed receipt is evidence that the landlord did, in fact, receive your repair request. You may need this in the event that the landlord fails to respond and you decide to do needed work yourself or withhold rent. If a dispute arises as to your right to use a self-help measure, you'll be able to prove in court that you satisfied the legal requirement of notifying the landlord first.

If you fax your request, ask for a call or return fax acknowledging receipt.



Don't lose your repair request to cyberspace!

Many landlords have gone high tech and permit tenants to send repair requests via email. This is a great convenience for tenants with Internet access. Just take a few precautions. First, ask the landlord to acknowledge receipt of your email. Then, print a copy of your request and the landlord's acknowledgment for your records.

If your first request doesn't produce results—or at least a call or note from the landlord telling you when repairs will be made—send another. Mention that this is the second (or third) time you have brought the matter to the landlord's attention. If the problem is getting worse, emphasize this fact. And of course, be sure to keep a record of all repair requests.

3. Keep Notes on All Conversations

Besides keeping a copy of every written repair request, don't neglect to keep a record of oral communications, too. If the landlord calls you in response to your repair request, make notes during the conversation or immediately afterward; write down the date and time that the conversation occurred. You may use these notes to refresh your memory and help you reconstruct the history of your case if your dispute later ends up in court.

You can keep track of other kinds of communications too. For example, if your dealings with your landlord are accomplished online, simply print out each email message.

4. Put the Landlord's Promises in Writing

If your landlord promises to make repairs, write a letter confirming that promise. Send a copy to the landlord, inviting him to reply if he thinks you have missed or misstated anything. This is called a letter

of understanding. If your landlord doesn't write back, the law presumes that he agreed with your version of the conversation. (This presumption will come in handy if you end up in court—your landlord will have a difficult time convincing the judge that your version of events was wrong when he didn't make the effort to dispute it at the time.) See the Model Letter of Understanding Regarding Repairs, below.

H. What to Do If the Landlord Won't Make Repairs

If your landlord fails to live up to her legal duty to maintain your rental unit and the property, you have a variety of legal options designed to pressure the landlord into compliance. We call these the “big sticks” in a tenant's self-help arsenal. They are:

- **Call local building or health inspectors.** This is a cheap and easy first step for tenants; all you need do is pick up the phone and report the problem. If your landlord is the type to ignore violations, you may need to resort to one of the even bigger sticks listed below. Section I, below, covers this option.
- **Repair the problem (or have it repaired by a professional) and deduct the cost from the rent.** This is a good alternative when your landlord refuses to take care of a small but serious problem, like a broken door or window lock. It's not appropriate for problems that cost more than a few hundred dollars or that require special expertise to fix, such as work that may affect the property's electrical, plumbing, heating or other building system. Section J, below, covers the repair and deduct option.
- **Withhold rent.** This option always gets your landlord's attention. But there's no guarantee how the landlord will respond. If the landlord sues you for nonpayment of rent, you must defend yourself or face eviction. Section K, below, covers rent withholding.
- **Pay the rent and then sue the landlord for the difference between the rent you paid and the value of the defective premises.** With this option, you don't risk eviction but must still file papers and appear in court to present your case. Section L1, below, covers these kinds of lawsuits against the landlord.

Model Letter of Understanding Regarding Repairs

300 West 55th Street, Apt. 17-K
New York, NY 10019

March 15, 200x

Mr. Billy Higgins, Property Manager
Management Office
300 West 55th Street
New York, NY 10019

Dear Mr. Higgins,

Thank you for calling me yesterday, March 14, 200x, regarding my request for repairs dated March 10, 200x. In that request, I told you that there were dark, moist, water stains on the ceilings of my bedroom and bathroom. I am concerned that these leaks will get worse, damage my property, and make those rooms unsafe or unusable.

As I understand it, the leak is due to a small tear in the roof membrane directly over my apartment. You agreed to have the roof repaired during the week of March 20, 200x. You further agreed to repair and paint the ceiling damage in my bedroom and bathroom after completion of the roof repairs. You assured me that all repair and painting work required to be done inside my apartment would be completed no later than April 10, 200x, in time for a party I am hosting in my home on April 12.

I would appreciate if the interior repairs and painting could take place on weekdays, between the hours of 8 a.m. and 5 p.m. while I am at work. You have a copy of my top lock key on file in the management office.

Please let me know if your recollection of your conversation and plans differs from mine. You can reach me at work at 555-4200.

Very truly yours,

Amanda Cohen

Amanda Cohen

- **In New York City, bringing an “HP” proceeding in Housing Court to compel the landlord to make repairs.** This is a good way for one or more tenants to force their landlord to correct conditions that violate applicable housing codes. While you must fill out a form to start the case and appear in court, you do not need a lawyer to represent you. Section L2, below, covers “HP” proceedings.
- **In New York City, Nassau, Rockland and Westchester Counties, bring a “7-A” proceeding to have the building removed from your landlord’s hands.** This option requires the consent of one-third or more of the tenants in your building. Section L3, below, covers “7-A” proceedings.
- **If the unit is rent-regulated, apply for a rent reduction for decreased services from the Division of Housing and Community Renewal (DHCR).** If you have a year or two to wait for a decision (and you can live with the problem), this is a cheap and easy way for a tenant who loathes going to court to get a rent reduction. You can’t file a complaint and go to court over the same condition, however. Section M, below, covers DHCR rent reductions.
- **Move out.** This is a worst-case scenario that should be used only if the premises have become destroyed or so damaged as to become unlivable. Section N, below, covers the option of moving out.

If your landlord hasn’t fixed a serious problem that truly makes the rental unit uninhabitable—a severe water leak for example—you will want to take fast action. But not every case is so clear-cut. For less threatening issues, like a broken toilet or a floor repair, you’ll need to give your landlord a reasonable time to respond. Before you withhold rent, move out or adopt another extreme remedy, make sure each of these conditions is met:

1. **The problem is serious, not just annoying, and imperils your health or safety.** Not every building code violation or annoying defect in a rental home (like the water heater’s ability to reach only 107 degrees F, short of the code-specified 110 degrees) justifies use of a “big stick” against the landlord. Read the preceding sections to make sure that the conditions in your apartment violate the warranty of habitability. Not every housing code violation violates

the warranty of habitability. For instance, your landlord’s failure to post the building’s multiple dwelling registration number in the lobby is a technical violation of the multiple dwelling law, but wouldn’t create a breach of the warranty. We discuss this distinction in Section B3, above. To get action for “minor repairs” promised under your lease or rental agreement, you will need to bring a small claims court action for breach of contract, as discussed in Section C1, above.



Before doing repairs yourself, withholding rent or using another “big stick,” make sure you have proof of how bad the problem was. One good approach is to take photographs of the problem; another is to have witnesses. Also consider asking an experienced and impartial contractor or repair person to examine the situation and give you a written description (signed and dated) of the problem and estimate for repair. Inspection reports issued by government agencies are also excellent proof.

2. **You (or a household member or guest) did not cause the problem, either deliberately or through carelessness or neglect.** If so, your use of one of the self-help options won’t be upheld, as explained in Section F, above.
3. **You have the discipline to put aside any rent you withhold or deduct, in case a judge decides that you shouldn’t have done so.** If a judge decides that conditions in your apartment didn’t justify withholding rent or using repair and deduct, you could get as few as five days to come up with all the rent that’s due or face eviction. (Chapter 16 provides more details on this situation.) By voluntarily putting aside any disputed rent (which means not spending it on anything else), you’ll have the funds available to avoid eviction if it turns out that you were wrong to engage in self-help.
4. **If you move out, either voluntarily or because the building is vacated due to code violations you report, you can find a comparable or better unit.** While you can seek damages from the landlord for relocation expenses, that won’t help you if you can’t find another place to live.

The following sections discuss several commonly used legal remedies available to tenants whose

landlords have failed to live up to their repair and maintenance responsibilities. Before taking any actions, read through all the remedies below to see which is the best course of action for you.

I. Reporting Code Violations to Local Inspectors

If your landlord refuses to fix inoperable plumbing, a leaky room or bad wiring in spite of having adequate notice of the problem, your first option might be to pick up the phone and complain to your local building, health or fire department. (We explain what types of conditions violate state multiple dwelling laws and the New York City Housing Maintenance Code in the early sections of this chapter.) Your complaint will usually trigger a call to the landlord and, when the matter can't be resolved over the phone, an inspection of the property. If the inspector discovers conditions in your rental unit (or in the common areas of the property) that violate state multiple dwelling laws or local housing codes, the inspector will issue a violation citation ordering your landlord to correct the problem within a limited time period (usually one to 90 days, depending on the severity of the violation).

If the landlord fails to comply, the municipality can assess monetary fines and penalties. If there's still no response, the municipality may perform emergency repairs at the landlord's expense or go to court seeking an order compelling the landlord to make repairs. In some cases, a landlord's failure to fix serious violations of state and local housing laws is a misdemeanor (minor crime) punishable by imprisonment. In rare cases, especially if tenants' health is imperiled, local officials may require that the building be vacated.

In many cases, simply reporting a code violation will be enough to spur your landlord into taking corrective action. But some landlords ignore violations. If your landlord doesn't respond, you'll need to follow up with one of the other tenant remedies discussed below.



It's illegal for landlords to retaliate against tenants for making a legitimate complaint to a housing code enforcement agency, or otherwise enforcing your rights as a tenant, by threatening to evict you. Chapter 11, Section B, explains New York's anti-retaliation law.

J. Repair and Deduct

If the landlord has failed, after your written notice, to make a small but vitally important repair, say to a lock or broken window, or fails to deal with a serious maintenance problem, such as a rodent infestation, you may use a legal remedy called "repair and deduct." It works like this: Under certain conditions you can, without your landlord's prior permission and without filing a lawsuit, have the defect repaired and subtract the cost of the repairs from the following month's rent.

Like the rent withholding option described below, the repair and deduct remedy cannot be invoked at whim. The following requirements must be met before you can use the repair and deduct remedy.

- **The expense must be relatively small yet the problem must significantly affect the habitability of the premises.** You shouldn't use this remedy to tackle big or expensive repairs to defective building systems, such as the electrical, plumbing, heating, ventilation or air conditioning systems. Nor should you use this option to make repairs that require special expertise, such as removing broken asbestos tile or repairing peeling lead paint. The repair and deduct option is best used to deal with small, discrete jobs—such as the repair of a defective entrance door lock, the replacement of a broken window or a one-time vermin extermination. Avoid any job that could adversely affect other tenants or building systems if things go wrong. One rule of thumb is that the repair should cost less than a few hundred dollars.
- **The repair must clearly be your landlord's responsibility.** You cannot use the rent deduction method to fix a problem that was caused by your carelessness or misconduct—for example, you can't use this remedy to replace a window your son broke.
- **Before using the repair and deduct remedy, you must notify the landlord of the problem.** The notice can be oral or written (but we recommend putting your notice in writing). And there's no requirement that you warn the landlord that you intend to use this remedy if she fails to respond.
- **Your landlord must be given a "reasonable" time to fix the problem.** The time limit depends on the nature of the problem. (*Kekillas v. Saddy*, 88 Misc.2d 1042, 389 N.Y.S.2d 756 (Dist. Ct.,

Nassau County, 1976.) You must also be sure to provide access to the landlord to inspect and repair.

EXAMPLE: On a chilly November evening, the pilot light for Larry's apartment hot water heater failed. He called his building manager, who promised to fix it soon. After calling the manager several more times to no avail and suffering through several days with no hot water, Larry called a licensed plumber who came promptly and replaced the broken mechanism for \$152. Larry deducted \$152 from his next rent check and gave his manager the repair bill.

Your landlord may accept your explanation for the deduction and simply expect you to begin full rent payments the next month. But if the landlord thinks your deduction was unreasonable or unjustified, he may demand full payment of the rent. If you don't pay, the landlord may bring a nonpayment eviction proceeding against you. If you followed all of the advice in this chapter, you should have a good defense to nonpayment. If, however, a judge feels otherwise, you may be ordered to pay the disputed rent to the landlord or face eviction.

K. Rent Withholding

While there isn't any statute that explicitly authorizes New York tenants to withhold rent, tenants may withhold all or part of their monthly rent when they believe their landlord has violated the warranty of habitability by ignoring serious repair or maintenance problems—for example, when your apartment is infested with mice, or if you suffer a continuous barrage of loud grinding sounds from the elevator machinery next to your unit. (*Park West Mgt. Corp. v. Mitchell*, 47 N.Y.2d 316, 327-328, 418 N.Y.S.2d 310, 391 N.E.2d 1288, cert. denied 444 U.S. 992, 100 S.Ct. 523, 62 L.Ed.2d 421.) Conditions that violate RPL § 235-b, New York's implied warranty of habitability, are discussed in Section A, above. Chapter 10 covers your rights when it comes to excessive noise.

Tenants in Buffalo and New York City have another ground upon which to withhold rent. The multiple dwelling law permits a tenant to stop paying rent if

the landlord has failed to a correct one or more serious "rent-impairing" violations affecting your apartment or the building *for six months or more*. (MDL § 302-a.) (See "All Violations Are Not Created Equal" in Section B, above.) Unfortunately, this statute doesn't help tenants very much because it requires them to live with at least one hazardous condition for a full six months before they can invoke it as a ground for rent withholding. And there's another hitch: If your landlord sues you for rent and you raise this statute as your defense to nonpayment, you must deposit all rent due with the court clerk *at the time you answer the landlord's nonpayment petition*. You don't need to do that if you raise a warranty of habitability defense instead, which is the strategy we recommend.

1. Notifying Your Landlord

While you are not technically required to send your landlord a letter alerting him that you intend to withhold rent, it's a good idea to write one anyway. A letter leaves no doubt as to why you are not paying rent and what the landlord must do to begin receiving rent again. And if your landlord takes you to court for nonpayment of rent, a copy of your letter provides still more evidence (when coupled with your prior repair requests) that your landlord had notice of the problem and an opportunity to fix it before you withheld rent.

Your letter should describe the defective condition in your apartment and your intent to withhold rent. A sample rent withholding letter is shown below. Note how the tenant has carefully recited the history of her dealings with the landlord on this subject. By adding the words "severely diminished the value of my apartment since at least March 200X," she has also put her landlord on notice that she intends to seek a retroactive rent reduction from the landlord, or from a judge if the landlord sues her for withheld rent. While a tenant is not legally required to include these words in the notice to be entitled to a rent reduction for conditions that breach the warranty of habitability, they can work to motivate the landlord. Your rent withholding letter should state that the defective condition makes your apartment uninhabitable and should refer to the warranty of habitability statute (Real Property Law § 235-b.) Hand-deliver the letter or send it "certified receipt."

Model Rent Withholding Letter

300 West 55th Street, Apt. 17-K
New York, NY 10019

May 1, 200x

Mr. Billy Higgins, Property Manager
Management Office
300 West 55th Street
New York, NY 10019

Dear Mr. Higgins,

As you know, I am the tenant of Apartment 17K at 300 West 55th Street. On March 14, 200x, you acknowledged to me on the phone that the roof above my apartment is in need of repair, and you agreed to perform the necessary work during the week of March 20, 200x. You further agreed to repair and paint the water damage to the ceilings of my bedroom and bathroom after completing the roof repairs. You assured me that all of this work would be finished no later than April 10, 200x.

As of this date, no work has been done on the roof. (I verified this with Jim Miller, the building superintendent.) Meanwhile, the leaks into my apartment have grown worse. Each time it rains, I must put buckets on the floor of my small bathroom and on my bed to catch the dirty water, so that it does not damage my bedding, carpeting and floors. Whenever there is a heavy rain, the water continues to drip through the ceiling a full 24 hours after the rain ends, depriving me of the use of my bed and forcing me to sleep on my living room couch. I am concerned that the water-damaged ceilings are in danger of collapse.

Under New York Real Property Law Section 235-b (the "warranty of habitability"), the landlord is responsible for keeping my apartment fit for habitation and free of dangerous or hazardous conditions. The conditions in my apartment constitute a breach of the warranty of habitability and have severely diminished the value of my apartment since at least March, 200x. Please be advised that I have elected to begin withholding rent for my apartment as of May 1, 200x and will continue to do so until such time as all repairs are complete. As always, you may reach me during business hours at work at 555-4200, or leave a note under the door advising me when I can expect the repairs to be completed.

Very truly yours,

Amanda Cohen

Amanda Cohen

2. What to Do With the Funds

If you decide to withhold rent, you aren't required to put the rent money into an escrow account or to deposit the money with a housing agency or court. The only exception is for tenants who are ordered to do so by a judge, after a nonpayment proceeding has been instituted against them. We cover court-ordered rent deposits in Chapter 15, Section K.

You should, however, put the funds aside, just in case you end up in court with your landlord and a judge orders you to pay all or part of the disputed rent to the landlord. If you can't pay up within the short time (five days) provided the landlord may apply for a warrant to evict you.

3. Landlord Responses to Rent Withholding

You landlord will not be pleased when your rent check fails to arrive. When you withhold rent, your landlord has three options. Some landlords may use all three; others only two or one:

- The landlord may attempt to resolve the problem directly with you—for example, by promising to make needed repairs by a certain date. Make sure you get any agreement like this in writing. Try to negotiate a rent reduction for the period of time after you gave notice until the time that the landlord fixed the problem.
- The landlord may instead (or next) go to a mediator for help with the rent dispute. In many areas, inexpensive landlord-tenant dispute mediation is available to landlords through programs run by local courts, universities, law schools and bar associations. There's no obligation for you to cooperate, and settlement agreements are non-binding.
- The landlord can also sue you in landlord-tenant court and let a judge resolve it. Unfortunately, this is the first course of action for most landlords.

If you get hit with a demand for the rent you have withheld, read Chapter 15 for suggestions on how to respond. If you have met the requirements explained above, you'll have a good defense to the landlord's eviction lawsuit. You may feel confident enough to head into court without a lawyer, or you may want to consult with an attorney first. If you have improperly used the remedy (for a minor repair, for example), you'll be evicted if you can't come up with the rent due.

Rent Strikes: A Primer

A "rent strike" occurs when a group of tenants who live in the same building collectively stop paying rent in response to conditions at the building which the landlord has refused, after notice, to correct. By banding together, the tenants who participate in a rent strike put significant financial pressure on the landlord to address building-wide or pervasive conditions that violate the warranty of habitability and/or violate housing maintenance codes, such as by a rodent infestation, malfunctioning elevators, a lack of heat or inoperable security systems. Usually, the tenants deposit their rent into an escrow account in case they are later ordered by a court to pay back any of the rent they have withheld.

Landlords usually respond to rent strikes in one of two ways. The first and best way is for the landlord to respond by correcting the defective conditions and offering to reduce all or part of the rent for the time period that conditions were uninhabitable. The more common response is for the landlord to commence individual nonpayment eviction proceedings against each of the tenants who have withheld rent.

Once they have answered the landlord's nonpayment petitions, the tenants may ask the court to "consolidate" the individual nonpayment proceedings into one big case. If the defenses and claims raised in the tenants' answers are substantially the same, courts often consolidate the proceedings. Then the tenants can either work out a settlement with the landlord or proceed to trial. Chapter 15 discusses nonpayment proceedings, answers and settlements.

Rent-striking tenants who live in New York City and the suburban counties of Nassau, Rockland, Suffolk and Westchester have another way to get repairs made. If at least one-third of the tenants in the building consent, the tenants may commence an "Article 7-A" proceeding asking the court to appoint a receiver to collect rents and make necessary repairs to the property. This tenant remedy is discussed in Section K3.

L. Suing the Landlord

When the landlord refuses to make necessary repairs, some tenants simply withhold rent, as explained in Section K, above. But with that option, you risk having to go to court to defend yourself in an eviction proceeding. A safer approach is to sue the landlord—you avoid the uncertainty and anxiety of waiting to see whether the landlord will sue you, and you risk less (if you lose, you'll be out your time and court costs, but you won't face losing your tenancy).

You may sue your landlord for money damages for breach of the warranty of habitability, as explained in Section 1, below. This option is available to tenants of all types of housing, statewide. Section 2 examines the "Housing Part" ("HP") proceeding—a do-it-yourself proceeding available to New York City tenants to compel the landlord to correct violations. And Section 3 looks at so-called "7-A" rent strike proceedings, aimed at taking a building out of the hands of a landlord. 7-A proceedings are available only to tenants in New York City and the counties of Nassau, Suffolk, Rockland and Westchester, and only when one-third or more of the building's tenants are willing to join in the proceeding.

1. Civil Court Action for Breach of Contract

A consumer who purchases a defective product—be it a car, a hair dryer or a steak dinner—is justified in expecting a minimum level of quality, and is entitled to compensation if the product is seriously flawed. Tenants are consumers, too, and may remain in possession of the premises and still sue the landlord for failure to provide habitable housing. If your landlord does not live up to his end of the bargain, you may sue for money damages, including:

- a partial or total rent refund or abatement for the time period that your landlord knew that conditions at the premises were substandard
- the value of or repair costs for property lost or damaged as a result of the landlord neglecting the premises—for example, furniture ruined by water leaking through the roof
- compensation for personal injuries—including pain and suffering—caused by the landlord's negligence, and
- attorney fees, if your lease or rental agreement contains a provision that entitles you to fees.

(Chapter 2, Section B, explains how these provisions work.)

The right court for your suit will depend on the size of your claim for money damages. If you're seeking \$3,000 or less, you can easily do it yourself in small claims court. (Chapter 18 discusses small claims court.) Small claims court judges usually won't order the landlord to paint, fix the dishwasher or repair the intercom. But they may order the landlord to pay you compensation for living in a rental unit with repair problems, on the theory that the landlord has breached the warranty of habitability or the lease or rental agreement—for example, by failing to deliver a functioning dishwasher or a working air conditioner when legally required to do so. The measure of damages is the difference between your monthly rent and the value of the unit with repair problems, multiplied by the number of months in which the landlord refused, after finding out about the problem, to fix it.

How much of a threat is a small claims suit likely to be? A judge is not going to adjust the rent because a little grout is missing from the bathroom tile. But if the dishwasher is broken, three faucets leak noisily and the bathroom door won't close, and you can prove it, your chances of winning go way up.

2. "Housing Part" Proceedings to Compel Landlords to Correct Violations

If you are a New York City tenant, you may bring a legal proceeding against your landlord to correct violations of any law relating to housing standards. (NYC Admin. Code § 27-2115(h); NYCCR § 110(a).) The proceeding is called a "Housing Part" or "HP" proceeding, because you can bring the case in the housing part of the New York City Civil Court, also known as Housing Court. You can bring the proceeding alone or together with other tenants who live in your building and who are experiencing building-wide service problems or conditions that violate the Multiple Dwelling Law or the HMC.

The defective conditions must exist at the time you begin your proceeding. However, it is not necessary for an official notice of violation to have been issued by HPD at the time you start the proceeding. You may request a housing code inspection when you begin the proceeding. Often, HPD carries out an inspection and reports any violations found to the Housing Part before the first hearing of the proceeding. The court

may use the inspection report as evidence of code violations or may rely on any inspection reports, records, photos or testimony you have to offer as to conditions at the property. The court may order your landlord to correct the violations within a prescribed time period by making needed repairs or providing required services.

Filing an HP proceeding is easy and you can do it yourself without a lawyer. To begin a proceeding, go to the New York City Housing Court in your borough and ask the clerk to help you file an HP proceeding against your landlord. To complete the necessary papers, you'll need to:

- bring a copy of your lease or rental agreement, copies of any requests for repairs and/or any inspection reports or lists of violations outstanding against your apartment or the building
- complete a request for an inspection, upon which you'll list all of the problems in your apartment or building
- complete and sign a "petition" form, a legal paper which identifies you and your relationship to the property and provides details on the conditions you believe violate housing codes in your apartment or the building. The form requests that the court order the landlord to correct the conditions, and
- pay a \$35 filing fee, which may be waived if you are a public assistance recipient.

After you sign the petition, you'll wait until a judge reviews and signs an accompanying "order to show cause." This order sets a court date, time and place for the hearing of your petition, around five days later, at which you and your landlord must appear. Then you must deliver or mail copies of the papers to the landlord and to the Department of Housing Preservation and Development (HPD), and complete an "affidavit of service" confirming how you delivered the papers.

On the hearing date, you'll appear in the courtroom listed on the order to show cause, at the time noted on the order. Legally speaking, you are the "petitioner" in this proceeding and your landlord is the "respondent." After your case is called, you will be asked to try to resolve the dispute with the help of an HPD attorney. This stage of the proceedings is informal. You are just discussing the problems in your apartment or at the building with the HPD attorney and showing her any documents you have that support your case. If the landlord agrees to

make repairs, the two of you will agree on a schedule, which includes your promise to provide access, if required, to your apartment for repairs. Some proceedings end at this point with a "consent order," in which the landlord agrees to correct the violations or face automatic civil penalties; others end with a "stipulation of settlement," an agreement in which the landlord simply agrees to correct the violations by a specified date.

If the landlord doesn't show up or disputes the conditions, you'll need to go before the judge. Bring your lease or rental agreement to prove that you are the tenant. If you don't have a lease or rental agreement, bring rent receipts or canceled rent checks to court with you. You should also bring photos or witnesses to prove that code violations exist in your apartment or building. Also, bring copies of your repair requests or other proof that you notified the landlord about the problems before you began the HP proceeding. If all goes well, the judge (or an attorney from HPD, if one has been assigned for your case) should have a copy of an inspection report that confirms your side of the story. If you persuade the court that the conditions do indeed exist, the court will order the landlord to make any needed repairs within a certain time period. If the landlord fails to do so, the landlord may be penalized or even imprisoned for being in contempt of a court order.

3. "7-A" Rent Strike Proceeding to Take Building Out of Landlord's Hands

Tenants who reside in New York City and the suburban counties of Nassau, Rockland, Suffolk and Westchester may join in a lawsuit with their neighbors to have an administrator appointed by a court to collect rents for the property and perform needed repairs. (RPAPL Article 7-A.) This is commonly known as a "7-A" proceeding. To be entitled to this relief, at least *one-third* of the tenants in occupancy at the property must join in the proceeding, which is heard within New York City in the Housing Court, and outside New York City in the district or justice court where the property is located. To qualify as a tenant, you must be legally obligated to pay rent to the landlord and be living in the building when the lawsuit begins. Family members or other occupants living with the tenant are not counted, nor are subtenants (since they pay rent to the tenant). Tenants

who are subletting their entire apartment are also not counted, since they are not in occupancy.

To prevail in a 7-A proceeding, the tenants must be able to demonstrate that the property:

- has been without heat, running water, electricity or adequate sewage
- is infested with rodents, or
- has one or more conditions dangerous to life, health or safety which has existed for at least five days.

The landlord may defend the lawsuit by showing that the conditions complained of have already been fixed or do not exist, were caused by a complaining tenant or a member of the tenant's household or have not been fixed due to the tenants' failure to provide access to their apartments to make repairs. After a trial, the judge may appoint an administrator to collect past due rent and future rents from all of the tenants in the building, and to use the rent for the purpose of fixing any dangerous or defective conditions at the property. Upon completion of the work, tenants resume paying rent to the landlord.

This type of proceeding is not a do-it-yourself project. If at least one-third of the tenants in your building are prepared to take action against the landlord, your best bet is to form a tenant association and hire one lawyer to represent the entire association.

M. Applying to DHCR for a Rent Reduction

If you are a rent-stabilized or rent-controlled tenant, you have another option at your disposal if your landlord has refused to perform required repairs or maintenance. You can apply to the Division of Housing and Community Renewal (DHCR), the state agency that enforces rent regulations, for a rent reduction due to decreased "individual apartment" or "building-wide" services. If the DHCR finds that the landlord has indeed decreased services, it will issue a rent reduction lowering your regulated rent until the landlord corrects the problem and obtains a DHCR "rent restoration order," which permits the landlord to charge and collect a full regulated rent.

Be sure to consider your alternatives before seeking a DHCR rent reduction order. If you are a rent-regulated tenant, filing a DHCR complaint is an alternative to going to court and suing the landlord for money damages for breach of the warranty of habitability

(explained above in Section L) or withholding rent and defending a nonpayment eviction proceeding with a warranty of habitability claim (explained in Section K, above). You can't seek a rent reduction for the same condition from both the DHCR and a court. So it's wise to consider the relative advantages and disadvantages to filing an administrative complaint.

The advantages to applying to DHCR for a rent reduction are that you can file by mail, there are no filing fees to pay and you are not required to appear in court or before the agency to obtain relief. The downside—and this is a big downside—is that it takes DHCR an average of 12 months to process your application, during which time you're expected to pay your full, monthly rent to the landlord. That may not matter if you're filing a complaint about broken floor tile in a guest room you rarely use, but for truly essential services, waiting 12 months for DHCR to act on your complaint won't make sense. For rent-controlled tenants, there's another big disadvantage—any eventual rent reduction order will *not* be retroactive, as explained. But if you don't have the time (or the constitution) to fight for a rent reduction in court, filing an administrative complaint may be a viable alternative for you.



DHCR offers expedited mediation for new reduced-service complaints.

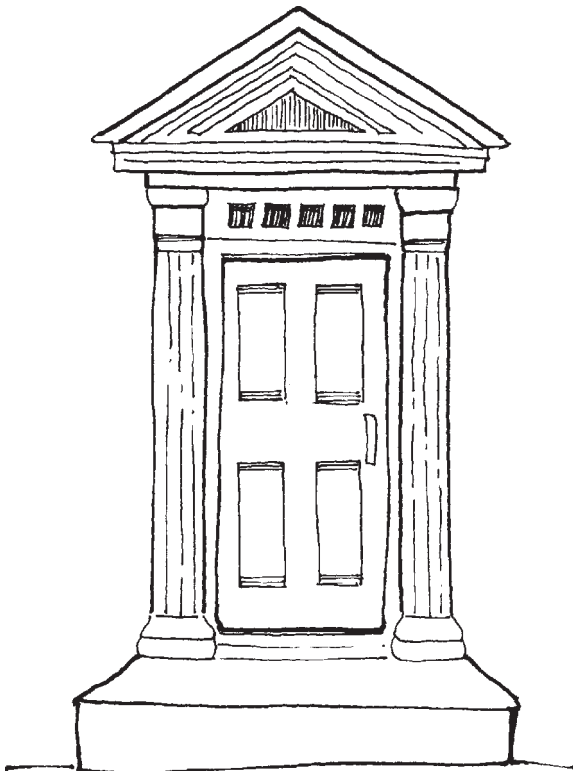
If your landlord consents, all newly filed reduced-service complaints are eligible for telephone mediation. Here's how it works. If you request mediation, your complaint will be handled by a counselor who will contact your landlord by phone. The counselor will attempt to have the landlord make repairs within 14 days. If services are restored during this time period, the case is over. You can't get any rent reductions for the time period in which the case was pending. If the landlord fails to restore services, your service complaint will be processed through the ordinary channels (requiring your landlord to file a written answer, inviting your reply and dispatching an inspector, if necessary for an on-site inspection), which takes an average of 12 months to complete. If the DHCR finds that the landlord decreased services, you are entitled to a rent reduction until the owner restores services and the DHCR issues a rent restoration order.

1. What Services Are Required?

Landlords may not reduce or suspend any services that were furnished to a rent-controlled or rent-

stabilized unit when the unit first became subject to rent regulation. These “base-date services” are also called “required services” for rent-stabilized units and “essential services” for rent-controlled units. Such services may include repairs, painting, maintenance, the furnishing of light, heat, hot and cold water, telephone, elevator service, kitchen, bath and laundry facilities and amenities such as maid service, linen service, janitor service and garbage removal. (Chapter 4 explains how to find out base-date services for your rental.) Landlords who reduce services to rent-regulated tenants are subject to rent cuts.

It's very important that you write your landlord about any service deficiencies before you commence any legal actions. You must request necessary repairs or maintenance from your landlord or the landlord's agent, in writing, at least ten—and no more than 60—days before you file a service complaint. (You can adapt the sample complaint letter that appears in Section G1, above.) You must attach a copy of your letter to the landlord to your DHCR complaint, along with a U.S. Post Office certificate of mailing, certified mail receipt or signed delivery receipt acknowledging personal delivery from the owner or agent. Prior landlord notice is *not* required for heat and hot water complaints, emergency repairs or when a fire requires you to move from the premises.



DHCR Can't Reduce Your Rent Over a "Minor" Problem

Under regulations issued in December 2000, DHCR may not order a rent reduction in response to certain “de minimus” conditions. The following conditions will generally *not* constitute a failure to maintain a required service:

Building-wide conditions that don't qualify for rent reduction:

Air conditioning. Failure to provide air conditioning in lobby, hallways, stairwells and other non-enclosed public areas.

Building entrance door. Removal of canopy over unlocked door leading to vestibule; changes in door-locking devices, where security or access is not otherwise compromised.

Carpeting. Change in color or quality under certain circumstances; isolated stains on otherwise clean carpets; frayed areas that do not create a tripping hazard.

Cracks. Sidewalk cracks that do not create a tripping hazard; hairline cracks in walls and ceilings.

Decorative amenities. Modification (for example, fountain replaced with rock garden); removal of some or all for aesthetic reasons.

Elevator. Failure to post elevator inspection certificates; failure to provide or maintain amenities (such as an ashtray, fan or recorded music).

Floors. Failure to wax floors; discrete areas in need of cleaning or dusting, where there is evidence that janitorial services are being regularly provided and most areas are clean (see “Janitorial services,” below).

Garage. Any condition that does not interfere with the use of the garage or an assigned parking space (for instance, peeling paint where there is no water leak).

Graffiti. Minor graffiti inside the building; any graffiti outside the building where the owner submits an “affidavit of on-going maintenance” indicating a reasonable time period when the specific condition will be addressed.

Janitorial services. Failure to clean or dust discrete areas, where there is evidence that janitorial services are being regularly provided because most areas are, in fact, clean.

DHCR Can't Reduce Your Rent Over a "Minor" Problem (continued)

Landscaping. Modification; failure to maintain a particular aspect of landscaping where the grounds are generally maintained.

Lighting in public areas. Missing light bulbs where the lighting is otherwise adequate.

Lobby or hallways. Discontinuance of fresh cut flowers; removal of fireplace or fireplace andirons; modification of furniture; removal of some furnishings (determined on a case-by-case basis); removal of decorative mirrors; reduction in lobby space where reasonable access to tenant areas are maintained; elimination of public area door mat; failure to maintain a lobby directory that is not associated with a building intercom; removal or replacement of window coverings (see "Decorative amenities," above).

Mail distribution. Elimination of door-to-door or other methods of mail distribution where mailboxes are installed in a manner approved by the U.S. Postal Service.

Masonry. Minor deterioration; failure to paint exterior bricks where there is no interior leak damage.

Painting. Change in color in public areas; replacement of wallpaper or stenciling with paint in the public areas; isolated or minor areas where paint or plaster is peeling, or other similarly minor areas requiring repainting, provided there are no active water leaks; any painting condition in basement or cellar areas not usually meant for or used by tenants; any painting condition that is limited to the top-floor bulkhead area, provided there is no active water leak in such area.

Recreational facilities. Modifications, such as reasonable substitution of equipment, combination of areas, or reduction in the number of items of certain equipment where overall facilities are maintained (see "Roof," below).

Roof. Discontinuance of recreational use (for example, sunbathing) unless a lease clause provides for such service, or formal facilities (such as a solarium) are provided by the owner; lack of repairs where water does not leak into the building or the condition is not dangerous.

Sinks. Failure to provide or maintain in compactor rooms or laundry rooms.

Storage space. Removal or reduction of, unless storage space service is provided for in a specific rider to the lease (not a general clause in a standard form residential lease), or unless the owner has provided formal storage boxes or bins to tenants within three years of the filing of a tenant's complaint alleging an elimination or a reduction in storage space service.

Superintendent/maintenance/staff/management. Decrease in the number of staff, other than security, provided there is no decrease in janitorial services; elimination of on-site management office; failure to provide an on-site superintendent, provided there is no decrease in janitorial services.

Television. Replacement of individual antennas with master antenna; visible cable; television wires; or the visible presence of other technologies.

Windows. Sealed or vented basement or crawl space windows, other than in areas used by tenants (for example, laundry rooms); cracked fire-rated windows; peeling paint or other non-hazardous condition of exterior window frames.

Individual apartment conditions that don't qualify for rent reduction:

Appliances and fixtures. Chips on appliances, countertops, fixtures or tile surfaces; color-matching issues with appliances, fixtures or tiles.

Cracks. Hairline cracks; minor wall cracks, provided there is no missing plaster, or no active water leak.

Doors. Lack of alignment, provided condition does not prevent proper locking of entrance door or closing of interior door.

Floor. Failure to provide refinishing or shellacking.

Noise. Caused by another tenant.

Window furnishings. Failure to re-tape or re-cord venetian blinds.

2. Individual Apartment Complaints

You may file an “Application For A Rent Reduction Based Upon Decreased Service(s)—Individual Apartment” (DHCR Form RA-81) to complain about reduced services to your individual apartment, such as a malfunctioning fixture or appliance, broken tile or falling plaster. A sample application is reprinted below. The two-page form is easy to complete. Don’t forget to attach a copy of your letter notifying the landlord of the conditions, along with proof of delivery.



NYC tenants must use a special complaint form for heat and hot water complaints.

If you rent in NYC, you must file a “Failure to Provide Heat and/or Hot Water—Tenant’s Application for Rent Reduction” (DHCR form HHW-1). While no prior notice to the landlord must be attached to the form, you must first notify the NYC Department of Housing Preservation and Development (HPD), the city agency that enforces housing maintenance codes, about your complaint and obtain their report showing a lack of heat and/or hot water in your apartment. Attach a copy of the report to your complaint.

3. Building-Wide Service Complaints

You can complain about problems that affect the common areas of the property, or that affect all of the tenants in the building, by filing a form called “Application For A Rent Reduction Based Upon Decreased Building-Wide Service(s)” (DHCR Form RA-84). A sample is shown below. You may file this complaint on your own, or along with other tenants in the building. The complaint may relate to any service decrease that affects all, or substantially all tenants, such as a reduction in elevator service or security or dangerous conditions in a common area of the building.

To be eligible for a rent reduction, you must sign the complaint as one of the claimants requesting the rent reduction. Add another sheet to the complaint form so everyone has enough room to print their name and apartment number and to sign next to their name. Rent-controlled tenants who don’t sign the complaint may nevertheless receive a rent reduction if DHCR finds that building-wide hazardous conditions exist at the property.

4. Docketing and Processing

When DHCR receives your complaint, it assigns a docket number and sends you a postcard notifying you of the docket number.



Don’t misplace the docket number! This number is the only way the DHCR can identify your complaint. Use this number to check on the status of your complaint by calling the DHCR’s InfoLine at 718-739-6400 or visiting the DHCR’s website at www.dhcr.state.ny.us.

The DHCR will send a copy of your complaint to the landlord, along with a notice to answer your charges. The landlord can respond by making the necessary repairs, providing the needed services or stating why the condition cannot be repaired or remedied. You may get an opportunity to respond to the owner’s answer. If the conditions are in dispute, the DHCR may order an inspection to obtain on-site evidence.

If the evidence indicates that the landlord has failed to maintain required services, DHCR will direct the landlord to restore services and may issue a rent reduction if you have requested one. Any ordered rent reduction continues in effect until the landlord completes the repairs and requests the restoration of your rent to its former level.

5. Rent Reduction Is Retroactive for Some

On average, it takes DHCR 12 months to process a service complaint. Rent-stabilized tenants get some relief from the delay, since rent reduction orders become effective the first day of the month following the date when the landlord was served with your complaint. That means you’ll be entitled to a retroactive rent reduction.

For rent-controlled tenants, the rent reduction order becomes effective the first day of the month *following* DHCR’s issuance of the order—which could be over a year after you’ve filed your complaint. For that reason, many rent-controlled tenants prefer to withhold rent and defend themselves in court, instead of filing a services complaint with DHCR.

DHCR Fact Sheet # 14, “Rent Reduction Due to Decreased Services,” has more information on filing a DHCR service complaint. To obtain the fact sheet, go to a borough or district DHCR office, call the



State of New York
Division of Housing and Community Renewal
 Office of Rent Administration
 Web Site: www.dhcr.state.ny.us

Gertz Plaza
 92-31 Union Hall Street
 Jamaica, NY 11433
 (718) 739-6400

Docket Number:

**Application For A Rent Reduction
 Based Upon Decreased Service(s) - Individual Apartment**

1. Mailing Address of Tenant:

Name: _____

Number/Street: _____ Apt. No.: _____

City, State, Zip Code: _____

Telephone No.: Bus. () _____

Res. () _____

2. Mailing Address of Owner:

Name: _____

Number/Street: _____

City, State, Zip Code: _____

Telephone No.: () _____

3. Subject Building (if different from tenant's mailing address):

Number and Street

Apartment Number

City, State, Zip Code

Instructions To Tenant: Before filing this application, you must first notify the owner or agent **in writing** of all the service decreases in this application. **You must attach a copy of your letter** and proof of mailing or delivery to the owner or agent. Your complaint will not be accepted for filing unless a copy of the letter and proof of mailing is attached. You must also complete Section 4 on this form.

Complaints may only be filed between 10 and 60 days after the letter is sent to the owner or agent. Prior written notice is **not** required for complaints about heat or hot water, other conditions requiring emergency repairs or vacancy due to fire.

Use this form to complain about decreased service(s) which you have not already reported to us. Mail or deliver the original, plus one copy of the signed form, and one copy of all attachments, to the Rent Office shown above. Keep one copy for your records.

Use this form if you want to report a decrease in services in your individual apartment. If you want to report a decrease in building-wide services, please use Form RA-84. To complain about a lack of heat or hot water, use Form HHW-1. Both forms are available at the Rent Office above or your Borough Rent Office.

Part I - General Information

1. My apartment is: ☐ Rent Stabilized ☐ Rent Controlled ☐ Hotel Stabilized ☐ SRO (Single Room Occupancy)

a. ☐ A Co-op/Condo (Complete the following):

Unit Owner/Proprietary Lessee: _____

Name of Cooperative Corp./Condo Assn.: _____

Managing Agent: _____

b. ☐ My building is managed by a 7a Administrator: _____

(Name of 7a Administrator)

2. I moved into my apartment on ____/____/____.
 Date

3. The total number of apartments in this building is: _____

4. The conditions noted in this application were brought to the attention of the owner or agent by letter on ____/____/____
Date

The letter was (check one): ☐ sent by regular mail; ☐ sent by certified mail; ☐ personally delivered. A copy of the letter and proof of mailing is attached to this application.

Important: You must submit proof of delivery (e.g. certificate of mailing, certified mail receipt, or signed receipt from owner/agent acknowledging personal delivery).

Part II - Description Of Decreased Service(s): Check the box next to the area where the condition (equipment or decreased service) exists. Describe in detail: (a) the condition which exists, or (b) the equipment or service which is not being maintained, and (c) the exact location (in the room) of the equipment, decreased service or condition which exists.

Example: ☒ Kitchen
There is a water leak under the sink in the kitchen.

Please be as specific as possible in order to ensure the timely processing of your application.

The owner has failed to provide or maintain services or equipment in my apartment and the following conditions exist:

- ☐ Kitchen: _____

- ☐ Bathroom: _____

- ☐ Bedroom (Specify which bedroom if more than one): _____

- ☐ Living Room: _____

- ☐ Dining Room: _____

- ☐ Hall Inside Apartment: _____

- ☐ Other (Specify which room and the problem): _____

Part III - Tenant's Affirmation

I have read the information on this form, and I affirm the contents to be true to my own knowledge.

False statements may subject you to the penalties provided by law.

Date

Tenant's Signature



State of New York
Division of Housing and Community Renewal
 Office of Rent Administration
 Web Site: www.dhcr.state.ny.us

Gertz Plaza
 92-31 Union Hall Street
 Jamaica, NY 11433
 (718) 739-6400

Docket Number:

**Application For A Rent Reduction
 Based Upon Decreased Building-Wide Service(s)**

1. Mailing Address of Tenant:

Name: _____

Number/Street: _____ Apt. No.: _____

Borough or Municipality,
 State, Zip Code: _____

Telephone No.: Bus. () _____

Res. () _____

2. Mailing Address of Owner:

Name: _____

Number/Street: _____

Borough or Municipality,
 State, Zip Code: _____

Telephone No.: () _____

3. Subject Building (if different from tenant's mailing address):

Number and Street

Apartment Number

Borough or Municipality, State, Zip Code

Instructions To Tenant: Before filing this application, you must first notify the owner or agent **in writing** of all the service decreases in this application. **You must attach a copy of your letter** to the owner or agent to this form. Your complaint will not be accepted for filing unless a copy of the letter and proof of mailing is attached. You must also complete Section 5 of this form.

Complaints may only be filed between 10 and 60 days after the letter is sent to the owner. Prior written notice is **not** required for complaints about heat or hot water, other conditions requiring emergency repairs or vacancy due to fire.

Use this form to complain about decreased building-wide service(s) which you have not already reported to us. Mail or deliver the original, plus one copy of the signed form, and one copy of all attachments, to the Rent Office shown above. Keep one copy for your records.

If you want to report a decrease in services within your apartment only, please use Form RA-81. To complain about a lack of heat or hot water, use Form HHW-1. Both forms are available at the Rent Office above or your District/Borough Rent Office.

Part I - General Information

1. The total number of apartments in this building is: _____.

a. ☐ This building is a Co-op/Condo (Complete the following):

Name of Cooperative Corp./Condo Assn.: _____

Managing Agent: _____

b. ☐ My building is managed by a 7a Administrator: _____
 (Name of 7a Administrator)

2. Are any other tenants in this building joining in this complaint? ☐ Yes ☐ No If "Yes," attach the Supplemental Signature and Affirmation, Form RA-84.1.

3. Do the tenant(s) filing this complaint have Tenant Representative(s)? ☐ Yes ☐ No If "Yes," you **must** complete the appropriate box on each Supplemental Signature sheet.

Note: Designating a tenant as a Tenant Representative does **not** make that tenant a party to the proceeding. In order for a representative who is also a building tenant to be included as a party to the proceeding, the representative's **signature** must appear on either the complaint form or the list of supplemental signatures.

4. If tenants are represented by an attorney, please complete the information below.

(Attorney's Name)

(Address)

(Borough or Municipality, Zip Code)

(Telephone Number)

5. The conditions noted in this application were brought to the attention of the owner or agent by letter on ____/____/____
(Date)

The letter was (check one): ☐ sent by regular mail; ☐ sent by certified mail; ☐ personally delivered. A copy of the letter and proof of mailing is attached to this application.

Important: You must submit proof of delivery (e.g. certificate of mailing, certified mail receipt, or signed receipt from owner/agent acknowledging personal delivery).

Part II - Description Of Decreased Service(s)

Check the box next to the area where the condition (equipment or decreased service) exists. **Describe in detail:**

- (a) the condition which exists, or the equipment or service which is not being maintained, and
- (b) the specific area in the building where the condition exists.

Example: ☒ Staircase: The hand rail is missing between the 3rd and 4th floors, and the 7th floor fire door does not close.

Please be very specific in order to ensure the timely processing of your application.

Important: If you are complaining about decreases in any of the following services, you must also complete and attach Form RA-84.2: laundry, doorman, security, storage and/or playgrounds.

The owner has failed to provide or maintain the following building-wide services:

- ☐ Entrance: _____
- ☐ Lobby: _____
- ☐ Hall: _____
- ☐ Staircase: _____
- ☐ Elevator: _____
- ☐ Other: _____

Part III - Tenant's Affirmation

I have read the information on this form, and I affirm the contents to be true to my own knowledge.

Date

Tenant's Signature

False statements may subject you to penalties provided by law.

DHCR InfoLine (718-739-6400) or visit the DHCR's website (www.dhcr.state.ny.us).

N. Moving Out

This drastic measure is justified only when there are truly serious problems, such as the lack of essential services or the total or partial destruction of the premises.

1. "Constructive" Eviction

Tenants can move out and abandon their rights to the premises if the rental becomes uninhabitable. Depending on the circumstances, you may move out permanently, by terminating the lease or rental agreement, or temporarily. This approach is borrowed directly from consumer protection laws. Just as the purchaser of a seriously defective car may return the car for a refund or sue to undo the contract, tenants can consider the housing contract terminated and simply return the rental unit to the landlord when the housing is unlivable.

The law, of course, has a convoluted phrase to describe this simple concept. It's called "constructive eviction," which means that, by supplying unlivable housing, your landlord has for all practical purposes "evicted" you. Although you are not physically barred from the rental unit, conditions make it impossible for you to continue living in your rental unit because, for instance, there is no heat in the winter, your apartment is overrun with mice or your apartment has been flooded with water. Structural defects that are the landlord's responsibility to repair may also create a constructive eviction. (*Bay Plaza Estates, Inc. v. New York University*, 257 A.D.2d 472, 683 N.Y.S.2d 538 (1st Dep't 1999).)

Under New York law, a tenant's obligation to pay rent is suspended where there is a constructive eviction from the premises. (See *Barash v. Pennsylvania Terminal Real Estate Corp.*, 26 N.Y.2d 77 (1970).) Practically speaking, however, tenants who move out are often sued for rent by their landlords. To avoid money damages, you will need to prove that the landlord had notice of the conditions and refused to act. Of course, if you move out in response to an emergency, such as a gas leak or flood, no prior notice to the landlord would be necessary. You would, however, need some proof that the conditions

existed. Chapter 16 discusses the types of evidence that tenants may use to prove defective conditions. Chapter 17 provides additional details on breaking a lease because of a destroyed or uninhabitable rental unit.

2. Damage or Destruction to the Premises

A tenant whose home is significantly damaged—either by natural disaster or any other cause beyond his responsibility or control—has the right to consider the lease at an end and to move out. (RPL § 227.) However, if the premises are partially destroyed, your rights can be modified under the terms of your lease or rental agreement. So-called "destruction clauses" often give the landlord the option to either terminate your lease or restore the premises for your continued occupancy. Of course, tenants are not required to pay rent during any restoration period in which they are out of occupancy. In addition, most landlord insurance policies kick in under such circumstances to cover the cost of your relocation during the period in which the premises undergo restoration. If you have renters' insurance, you may be entitled to additional protections.

If you are faced with the destruction of your premises, you'll want to submit a claim to your landlord for your costs. Keep track of and obtain receipts for all of your moving and housing-related expenses, including meals, during the period in which you are forced out of occupancy. If the landlord refuses to reimburse you, you can submit the claim to your renters' insurance carrier if you have one. Otherwise, you may need to sue the landlord to recover your costs.

If you can prove that the landlord or his employees were even partially responsible for the damage, your landlord's legal responsibility to you is likely to increase. Your landlord may be expected to cover a longer period of temporary housing and, if the substitute housing is more expensive, may be required to pay the difference between the new rent and the old rent. The insurance issue will also take on a different cast: Some policies exclude coverage for natural disasters, but include (as is standard) coverage for the owner's negligent acts. The facts surrounding the property damage or destruction, the terms of your lease or rental agreement and the wording of your landlord's insurance policy will determine how each situation is handled. ■



Stopping the Noise That's Driving You Crazy

A. Noisy Neighbors in Your Building	10/2
1. Your Right to a Quiet Apartment.....	10/2
2. Five Steps to Peace and Quiet	10/3
B. Noisy Building Equipment	10/6
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1. Local Noise Control Ordinances	10/7
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5. Aircraft and Helicopter Noise	10/9

Unless you're renting a single-family house, being a tenant means putting up with a certain amount of noise. The sound of amplified music, loud voices, barking dogs and noisy activities from neighboring apartments can permeate your walls, ceilings and eventually your soul. Noisy neighbors aren't the only culprits. Unwanted sounds and vibrations from building elevators, compressors, boilers and roof fans can also plague apartment dwellers. For city dwellers, outside noise from emergency vehicles, trash trucks, construction equipment and rowdy bars complete the picture.

Most New York tenants learn to live with noise or develop ways to tune it out. But like other forms of pollution, too much noise can be hazardous to your health. Daily doses of excessive noise can increase stress, interfere with sleep, impair concentration and damage your hearing.

Fortunately, there are steps tenants can take to reduce the level of noise pollution in their apartments. The right strategy depends on the source of the noise. In the sections that follow, we explain how you can reduce the clamor of noisy neighbors, building equipment, construction projects, nightclubs and even low-flying aircraft. We also provide model noise complaint letters you can send to your landlord when the noise originates inside your apartment building.



Related topics covered in this book include the warranty of habitability and tenant options, such as rent withholding, for violations.



Model Letters and Sample Forms in This Chapter

- Tenant's Noise Complaint to Landlord
- Noise Diary
- Follow-Up Letter to Landlord About Noise

A. Noisy Neighbors in Your Building

Neighbors can be one of the best aspects of apartment dwelling—as well as one of the worst. Anyone who lives in an apartment building must simply expect to hear some of the sounds of their neighbors' daily lives. Slamming doors, barking dogs, flushing

toilets and the rattling of pots and pans remind us that we're not alone. But when the occasional annoying sound turns into an ongoing din that makes it hard to talk on the phone, watch TV, read a book or sleep, it's time to take action. In this section, we examine your landlord's responsibility to control tenant-caused noise, and the steps you can take to get some peace and quiet.

1. Your Right to a Quiet Apartment

Your landlord is legally responsible for tenant-created noise disturbances. Under New York law, a continuous barrage of excessive noise is a breach of the warranty of habitability, an implied-by-law landlord promise that your rental unit will stay livable, usable and safe. (Chapter 9 explains the scope of the warranty of habitability.) An occasional loud party or isolated construction project isn't enough to violate the warranty of habitability. The disturbance must be of a regular or ongoing nature—for example, the sound of the children next door practicing piano for two to three hours each weekday evening; a neighbor's dog whining and barking whenever and for as long as his owner leaves her apartment; or techno-dance music blaring from your upstairs neighbors' apartment throughout each and every weekend. In order to qualify as a violation of the warranty of habitability, the noise must interfere with your normal activities such as conversation, listening to a radio or sleeping at night.

Once you lodge a complaint with your landlord about a chronically noisy neighbor, your landlord is required to investigate and take action to stop unreasonable noise. Landlords usually respond by asking the noisy neighbor to pipe down. But if the neighbor ignores the request, your landlord can't throw up her hands. She must take action, by better soundproofing the noisemaker's apartment or issuing a "notice to cure" advising the noisy neighbor to stop making noise within a fixed number of days or face eviction. And if the neighbor continues making too much noise, the landlord must follow through with eviction proceedings, as explained in Chapter 16.

Landlords who fail to take action against noisy neighbors can be liable to the complaining tenant for damages, usually awarded to the tenant in the form of a retroactive rent reduction known as a rent abatement. In one case, a Queens tenant complained to the landlord about loud noise from a neighboring

apartment in the late night and early morning hours. But neither the owner nor manager took any effective steps to stop it. Fed up, the aggrieved tenant stopped paying rent. When the landlord started a nonpayment proceeding to collect the rent, the tenant claimed that the landlord's failure to address the noise problem made the apartment uninhabitable. The judge ruled that the continuous, excessive noise violated the warranty of habitability, and entitled the complaining tenant to a 50% rent abatement. (*Nostrand Gardens Co-Op v. Howard*, 221 A.D.2d 637, 634 N.Y.S.2d 505 (2d Dep't, 1995).)

Landlord Construction Projects

Much of the noise tenants hear inside their rental units comes from work being performed around the property—boiler repairs, brickwork repainting, landscaping. Although landlord construction and upkeep projects are frequently noisy, such projects rarely entitle tenants to withhold rent or sue for a rent reduction. That's because the bulk of the work constitutes necessary repairs or capital improvements, which benefit the property and, in turn, improve conditions at the property for the tenants. Noise created by landlord repairs and improvements can't be said to breach the warranty of habitability, since the goal of the work is to maintain or enhance the property's habitability.



When the construction or renovation creates a hazard, such as lead dust or asbestos fibers, the picture changes. In these situations, landlords have specific duties to protect tenants from the harmful fallout. For details, see the Chapter 9 discussion of landlord liability for environmental hazards.

If your local noise ordinance prohibits construction activity between the hours of, say, 7:00 a.m. and 6:00 p.m. (as does New York City's), your landlord is required to comply. The only exception would be for emergency repairs. If your landlord is performing non-emergency work outside the hours permitted under your local ordinance, complain to your local police department or environmental enforcement officer, if your town has one. Section C, below, discusses local noise ordinances.

2. Five Steps to Peace and Quiet

Faced with a noisy neighbor? You can always call the police if an occasional party gets out of hand or a lovers' quarrel turns disturbingly loud. But if the problem is ongoing, here is a commonsense strategy that may stem the problem.

a. Step One: Approach the Noisy Neighbor

While the noise emanating from your neighbor's apartment might seem calculated to drive you insane, most noisemakers have no idea they are really disturbing others (or worse, they just don't care). Your neighbor might actually believe that you enjoy Patsy Cline's crooning on the stereo each night as much as she does. Bringing the problem to your neighbor's attention in conversation or in a friendly note may be enough to bring a prompt end to the noise.

For example, suppose your neighbor adopted an affable (but noisy) Chow pup a few weeks back. The dog's howling and whining has grown unbearably loud—especially in your living room. If you run into your neighbor, say, in the elevator, you could say something like this: "Rocky really loves people, doesn't he? Did you know that he howls and whines without stop every time you leave the apartment? I like dogs, but Rocky's constant howling is driving me crazy. Is there anything you can do?" This friendly but direct approach might do the trick. Your neighbor might decide to confine the dog to a different area of his apartment that doesn't abut yours, hire a pet-sitter when he's gone or even get rid of the pet.

But—and this is a big but—if your noisy neighbor seems "off" or otherwise threatening, think twice about a face-to-face meeting or even a note. The confrontation might simply not be worth it. Proceed immediately to Step Two, below.

b. Step Two: Send a Written Complaint to the Landlord

If the direct approach doesn't work after a week or two of trying, or if you feel uncomfortable confronting your neighbor, it's time to make a formal complaint to your landlord. Putting your concerns in writing shows the landlord you mean business. A written complaint also sets the stage for withholding rent, if you're forced to resort to that tactic later on. We discuss the benefits and risks of withholding rent for excessive noise below.

When writing to the landlord, clearly identify the neighbor who's making the noise; describe the nature of the noise, and the impact it's had on your quality of life. Your letter should also put the landlord on notice that you expect prompt action to stop the noise.

A model Tenant's Noise Complaint to Landlord is shown below. Write a letter like this if you're faced with a habitually noisy neighbor. Deliver it in the manner described in the "notice" section of your lease or rental agreement for giving notices to the landlord. (Chapter 2, Section B22, covers notice provisions in leases and rental agreements.) Keep a copy of your noise complaint letter and proof of mailing or delivery for your own files.

c. Step Three: Gather Evidence

After you've made a written noise complaint, you'll need to give the landlord time to act. Hopefully, you'll get some relief in a week or two. But if the noise continues, you'll need to begin gathering evidence to document it. Keeping a diary can be an effective way to show the frequency and duration of the noise.

A diary entry of a single day might look something like the sample below.

Documenting the sounds you hear will bolster your claim that the noise is excessive and unreasonable. It's important to keep the diary for at least four weeks to persuade the landlord that the disturbance has been ongoing and show that you're not overreacting or exaggerating its frequency. And if your landlord must bring eviction proceedings against the tenant to stop the noise, the diary could help the landlord win the case.

You can bolster your noise diary with audiotape—an inexpensive yet powerful evidentiary tool you can use to prove how noisy your neighbor really is. Going to your landlord with a tape of a typical

Model Tenant's Noise Complaint to Landlord

March 8, 200x

Anne Sakamoto
Lexie Realty
420 Lexington Avenue
New York, NY 10017

Re: Apt.4-A, 420 Lexington Avenue, New York, NY

Dear Ms. Sakamoto,

I am the tenant of Apt. 4-A at 420 Lexington Avenue. I am writing to notify you that the tenants of Apartment 5-A, which is directly above my apartment, have been creating excessive and unreasonable levels of noise which is disturbing my sleep and that of my 12-year-old daughter. The excessive noise began last month, soon after the tenants (Jim Silver and Kelly Foran) moved into the apartment.

Specifically, Jim and Kelly have been playing music on their stereo at an excessively loud volume almost every night beginning at around 11 p.m. and continuing until around 2:00 a.m. These tenants (and their friends, usually) stomp around the apartment at that time creating vibrations in my apartment below.

I spoke personally to Jim and Kelly approximately two weeks ago and asked them to lower the volume on their stereo and to install a rug or carpeting on the wood floors to deaden the stomping sounds. Unfortunately, the loud music and stomping has continued unabated. Please take the necessary action to end the noise in my apartment so we can get some sleep!

Very truly yours,
Martin Betancourt
Martin Betancourt, Tenant

Model Noise Diary

Date	Type of Noise	Time Noise Begins	Time Noise Ends	Impact
3/20/0x	Stomping of feet and dancing/Horseplay	11 p.m.	12 a.m.	Loud thuds, vibrations. China and glass shelves shake.
3/20/0x	Loud stereo music.	10:10 p.m.	2:17 a.m.	Sleep disturbance.

Rocky-the-Chow howling session, for instance, with a diary indicating the frequency of the sessions, is apt to persuade your landlord that your complaint is valid. You can also use the tape and diary in court if you end up there. We know of one tenant who did that and won a small claims court case. (She also played the tape really loud at night for the offending neighbors to hear!)

Hiring an acoustic engineer to take decibel readings of the sound level in your apartment is a more sophisticated—and more expensive—way to prove that your neighbor is excessively noisy. You can ask the engineer to prepare a letter about sound conditions in your apartment. If you end up in court, the engineer can testify about the sound level in your unit if you go to trial.

d. Step Four: Withhold Rent

If your landlord is unable or unwilling to effectively stop the noise, you may want to consider withholding rent. This should be a last resort, since doing so could land you in court defending your tenancy in a nonpayment of rent eviction proceeding. Before you actually withhold any rent, write a tough follow-up letter informing the landlord that the excessive noise has continued. Make it clear that you will withhold your rent as of the next payment date unless the landlord takes action to quiet the tenants or deaden the sound.

A Model Follow-Up Letter to Landlord About Noise is shown below. Write a letter like this if your landlord has refused or has been unable to effectively stop the noise. Deliver it in the manner described in the notice section of your lease or rental agreement for giving notices to the landlord. (Chapter 2 covers notice provisions in leases and rental agreements.) Keep a copy of the letter and proof of mailing or delivery for yourself.

If the landlord fails to act, and the noise continues, you'll need to decide whether to withhold rent. (Chapter 9, Section K, explains rules and procedures on rent withholding.) If you take this step, you must be prepared to go to court (and possibly lose your home), since the landlord might respond by bringing a nonpayment of rent proceeding against you. If you decide to withhold rent, keep your noise diary up to date so that you may use it as evidence in court (or to refresh your recollection of the dates and times of the disturbances, if you testify). Chapter 15 covers nonpayment eviction proceedings in detail.

Model Follow-Up Letter to Landlord About Noise

April 8, 200x

Anne Sakamoto
Lexie Realty
420 Lexington Avenue
New York, NY 10017

Re: Apt. 4-A, 420 Lexington Avenue, New York, NY

Dear Ms. Sakamoto,

I am the tenant of Apt. 4-A at 420 Lexington Avenue. On March 8, 200x, I wrote to notify you that the tenants of Apartment 5-A, which is directly above my apartment, have been creating excessive and unreasonable levels of noise which is disturbing my sleep and that of my 12-year-old daughter. The excessive noise began two months ago and has continued unabated.

Specifically, the tenants have been playing music on their stereo at an excessively loud volume almost every night beginning at around 11 p.m. and continuing until around 2:00 a.m. The tenants (and their friends, usually) also stomp their feet on the floor during these hours, creating loud thuds and vibrations in my apartment below.

Enclosed is a copy of a diary I have kept which documents the frequency and level of the noise emanating from Apartment 5-A. I have also made an audio tape of the noise, which I will use in court if necessary. The excessive and unreasonable noise has rendered my apartment unlivable and is a violation of the warranty of habitability. Please be advised that if you do not take action to remove the noisy tenants or properly soundproof my apartment, I shall have no choice but to withhold rent as of May 1, 200x. I sincerely hope this action will not become necessary.

Very truly yours,

Martin Betancourt, Tenant
Martin Betancourt, Tenant

e. Step Five: Sue the Landlord

There are two ways to get your noise complaint heard in court. As discussed above, you can withhold rent, wait for the landlord to begin a nonpayment eviction proceeding against you and raise your noise complaint as a defense for not paying rent. You don't need a lawyer to answer a nonpayment proceeding. You may file an answer and testify on your own behalf.

Or, you can take a different approach (and avoid the risk of losing your tenancy in a nonpayment eviction case) by filing a lawsuit against the landlord in State Supreme Court. There you can seek money damages, an order requiring your landlord to act and even punitive damages for the landlord's breach of the warranty of habitability. You will probably want to hire a lawyer if you decide to take this route, since there are lots of papers to prepare, file and serve to get the case rolling. Expert witnesses, such as an acoustical engineer who has taken decibel readings of the sound level in your unit, may also be required.



Small claims court may not be the best place to sue.

While you can sue for a rent abatement in small claims court, the court's monetary jurisdiction is limited. The maximum you can sue for in small claims court is \$3,000. And unlike other courts, the court is without authority to order your landlord to take action to reduce the noise.



It's risky to move out over noise.

Technically, a tenant can move out if her rental unit is uninhabitable. (Chapter 9, Section N, discusses this option.) But chances are, if you moved out due to a noisy neighbor, your landlord would take the position that you broke your lease or rental agreement, apply your security deposit to the last month's rent and sue you for lost rent until a new tenant moves in. Unlike other conditions that make a rental unit uninhabitable, like fire damage, a collapsed roof or vermin infestation, it's a lot harder to prove you fled because of a noisy neighbor. Noise is a subjective experience that's intermittent and incapable of being photographed. While a noise diary, audio tapes and decibel readings can help you prove that the noise coming from your neighbor's unit is unreasonable, if a judge thinks that you should have put up with the noise, you could be on the hook for rent until a new tenant moves into the unit or your lease runs out, whichever occurs sooner.

B. Noisy Building Equipment

Apartment buildings are full of mechanical devices such as roof fans, pumps, compressors, generators, elevators and boilers. Yet most tenants are blissfully unaware of their existence. But for tenants whose rental units are situated directly under a roof, over a boiler room or adjacent to an elevator shaft, the clunks, clangs, clicks, slams and vibrations emanating from mechanical equipment can be maddening, especially in the middle of the night.

If you are plagued with excessive noise from building equipment, it is your landlord's responsibility to stop the noise. The steps for getting your landlord to take action to quiet noisy equipment are almost identical to the ones tenants must follow for quieting noisy neighbors. (See Section A, above.) First, you must put your noise complaint in writing to your landlord. If the landlord does not respond, you'll need to document the noise. Finally, if the noise



doesn't stop, you'll need to write a tough follow-up letter to the landlord, threatening to withhold rent if the noise continues.

Like sounds from noisy neighbors, unwanted noise from mechanical equipment can also violate the warranty of habitability if the noise is excessive and ongoing. Tenants are entitled to damages for landlord violations of the warranty of habitability. (See Section A1, above for more information on the warranty.)

For example, a Manhattan tenant withheld rent over noise caused by a defectively mounted industrial exhaust fan situated above the tenant's living room. The landlord commenced a nonpayment eviction proceeding against the tenant. The judge awarded the tenant a 40% rent abatement because of the noise. (*Little v. Robinson*, NYLJ, 4/13/93, (App. Term, 1st Dep't).) Another tenant in the Bronx stopped paying rent because noise and vibrations from an adjacent laundry room made it impossible to listen to music or the television in his apartment, and caused his dishes to vibrate and move. The landlord started a nonpayment eviction proceeding for the rent. The judge who heard the case awarded the tenant a 50% rent abatement. (*River Terrace Apartment, Inc. v. Robinson*, NYLJ, 5/27/98, p. 27, col. 3 (Civ.Ct. Bronx County).)

C. Street Noise

Much of the noise that drives us crazy comes from outside our apartment buildings. Wailing car alarms, screeching garbage trucks and booming nightclubs are just a few of the street sounds that can be heard right through closed windows.

Landlords aren't responsible for noise that comes from outside the rental property. So writing a letter to your landlord is a waste of time. For relief, you'll need to look to applicable noise control laws and ordinances, most of which are local. New York State has no noise control laws or regulations. Federal noise laws are limited—they primarily govern noise emission standards for equipment, trucks, railroads and aircraft (federal law regarding airport noise is covered in Section 5, below). The Federal Noise Control Act (42 U.S.C. § 4901 and following) sets noise emission standards for interstate railroads and motor carriers, as well as for construction equipment and related equipment sold in the United States.

1. Local Noise Control Ordinances

Noise control ordinances usually take one of two forms. One kind prohibits excessive noise between certain hours. For instance, the noise ordinance for the village of Eastchester, located in Westchester County, prohibits unnecessary or unusual noise between the hours of 10 p.m. and 8 a.m. If your locality has an ordinance like this, you can complain about excessive noise that occurs only between the hours set forth in the law. The other kind of noise ordinance, currently in effect in New York City and Rochester, prohibits unreasonable noise at all times. That means that you can complain about an excessively noisy boom box at noon or at midnight. All noise control ordinances carry monetary penalties for violators.

New York City's ordinance is very comprehensive—for example, it sets forth specific minimum decibel limits for noise, which makes it easier for noise violations to be effectively proved. See "Noise Rules and Resources in New York City" for details on the City ordinance.

Here are a few examples of noise ordinances in two other New York cities:

- Buffalo. The Buffalo Noise Ordinance (Chapter 293), in effect since 1990, prohibits "all excessive and unreasonable noise from all sources" including "sound reproduction devices," horns, alarms, pets, yelling, shouting or hooting. It also prohibits most noisy construction and lawn maintenance work between the hours of 9 p.m. and 7 a.m. Violations of the noise code should be reported to the Buffalo Police Department.
- Syracuse. The Syracuse Noise Ordinance prohibits the playing of "any radio, stereo, television, musical instrument or any device that produces sound in such a manner as to create unnecessary noise that crosses property boundaries and annoys a person of reasonable sensibilities." (Syracuse Ordinance § 40-16.) Complaints can be called into the Police Department's communications department at 315-442-5111.

Many other New York cities, towns and villages have enacted noise control ordinances. Contact your city manager, supervisor or mayor's office. Also, check local government websites which often include local ordinances. You can find these at <http://piperinfo.com/state/states.html>.

Noise Rules and Resources in New York City

The New York City Noise Control Code (NYC Admin. Code § 24-201 and following), which has been in effect since 1972, prohibits “unreasonable noise” and sets allowable sound levels for certain types of devices and activities. The Code applies to noise from pet animals and birds, sirens, horns, construction activities, garbage trucks, mechanical equipment, commercial establishments, aircraft and railways. In addition, the Code prohibits owners of buildings and vehicles from operating burglar alarms unless they automatically shut off within fifteen minutes (for a building) and ten minutes (for a vehicle). Construction activity is prohibited before 7 a.m. and after 6 p.m., unless the contractor has received a special permit.

In 1997, Mayor Giuliani beefed up the penalties for second and subsequent violations of the Code. The old penalties had simply become a cost of doing business for commercial establishments like nightclubs and bars, which had become a big headache for many tenants. (Local Law 84 of 1997.) When this book went to press in 2002, minimum fines for unreasonable levels of music coming from a commercial establishments are \$3,500 for the first violation, \$6,400 for the second violation and \$9,600 for the third and subsequent violations of the Noise Ordinance.

If you are experiencing an on-going noise problem from within your building, deal with your landlord first, as explained in Section A. For the occasional loud party or other disturbance within your building or any external noise, such as a construction project or noisy nightclub, help may be available from one of several different New York City government and public agencies, which share enforcement duties under the Code.

Local police precinct. Call your local police precinct (not 911) to report an “immediate” noise problem such as a loud party, domestic disturbance, continuing car alarm or noise outside bars or clubs. While the police may not make your noise problem their top priority, officers are eventually dispatched to the scene to investigate such complaints and to issue noise code violations when appropriate.

Department of Environmental Protection (DEP). Call 718-DEP-HELP (337-4357) to complain about ongoing noise from dogs, construction, nightclubs, outside speakers, private garbage trucks (Department of Sanitation trucks should be reported to the agency) or mechanical equipment outside your building.

Inspectors can measure sound and issue violations that carry monetary fines. The phone line takes calls 24-hours a day, seven days per week.

Department of Sanitation. Call 212-219-8090 to report ongoing, excessive noise from New York City sanitation trucks.

Mayor’s office. Contact the Mayor’s Quality of Life Hotline at 888-677-LIFE (5433) to report any excessive noise. The Hotline refers complaints to the appropriate government agency (usually, DEP) for investigation. This Hotline was set up as a centralized action center for various “quality of life” complaints about issues in addition to noise, such as air quality, graffiti, local drug-dealing and sanitation.

Local Community Board. Your local Community Board is a group of 50 interested citizens who represent your neighborhood and advise the Mayor’s Office and City Council members on community land use and zoning matters and municipal service delivery. While local community boards may not order the police or a city agency to shut down a noisy business, they are often successful at resolving noise problems that impact the community. Your local police precinct should be able to refer you to the community board office for your neighborhood. The New York City website lists the address and phone numbers for all 59 community board offices, and the neighborhoods they serve (www.nyc.gov/html/cau/html/cblist.html).

New York State Liquor Authority. One way to fight noise from bars, sidewalk cafes and restaurants serving liquor is to oppose the renewal of the noisy establishment’s liquor license. These licenses come up for renewal every three years. The Liquor Authority considers a licensee’s record of complaints and violations when it reviews the renewal application. To file a complaint, write a letter describing the noise problem to the Deputy Commissioner of Licensing, State Liquor Authority, 11 Park Place, New York, NY, 10007, tel. 212-417-4115. Information about the licensing and renewal process is available online at www.abc.state.ny.us.

NYC Economic Development Corporation. For New York City tenants, helicopter noise can be a big problem, since there are no minimum altitude requirements for helicopters. To file a complaint, call this agency’s Helicopter Noise Complaint Hotline at 212-312-3964.

2. Burglar Alarms

Not too long ago, many a tenant lost sleep from car and building burglar alarms that wailed all night long. Fortunately, many cities, including New York City, have outlawed alarms that don't automatically shut themselves off.

If the burglar alarm continues to blare for more than 15 minutes, you can call your local police precinct or station (not 911). Local laws usually permit police officers to disengage alarms systems. On cars, the police sometimes use the license plate number to notify the owner of the car to turn off the alarm.

3. Construction Noise

Construction equipment sold in the United States must meet federal noise emission standards aimed at reducing the noise level for compressors and jackhammers. Nevertheless, construction noise can be mind numbing, especially when work is taking place very early in the morning or at night. Most local noise ordinances, including those in New York City, limit the hours during which construction work may take place. If your local ordinance restricts the hours in which construction activity must take place, you can complain to your local police department about construction work that takes place outside those hours—even if the work is being conducted by your landlord within your building. Most municipalities make an exception for emergency repair work, however.

4. Noisy Nightclubs and Bars

Some neighborhoods are quiet by day but turn raucous when local clubs and bars start rocking late at night. If you can hear unwanted noise from inside your apartment, chances are the establishment is violating your municipality's noise ordinance.

If the nightclub or bar is a commercial tenant in your building, it is your landlord's responsibility to abate excessive or unreasonable noise in your apartment. You can take the steps outlined in Section A, above, to deal with the situation.

Landlords are not responsible for noise from a nightclub or bar located in space that your landlord does not own or control. For immediate relief, you can call your local police station. If the problem is ongoing, make a complaint to the agency that

enforces the local noise code. For example, the New York City Noise Code is enforced by the city's Department of Environmental Protection. To verify your complaint, city inspectors may take several noise level readings in your apartment with the windows closed. If the tests reveal that the music or other noise exceeds allowable sound levels, the operator of the establishment will be issued a violation and fined.

The New York State Liquor Authority is also a good place to complain (for detail on this state agency, see "Noise Rules and Resources in New York City," above). You may also complain to local legislators about noisy nightclubs and bars. A legislator usually has more clout with enforcement agencies than a tenant does. New York City tenants may complain to their local community board. In other municipalities, a complaint to the mayor's office may help.

5. Aircraft and Helicopter Noise

New York has 25 airports and dozens of heliports. Increased competition among airlines and the proliferation of overnight delivery services has resulted in a substantial increase in air traffic in New York, particularly at night. With more air traffic comes more noise pollution.

Several federal acts require the Federal Aviation Administration (FAA) to develop noise standards and take abatement action near airports and heliports. (Aircraft Noise Abatement Act (49 U.S.C. § 44715); Airport Noise and Capacity Act (49 U.S.C. 47521 and following).) If you live in a rental property that is close to an airport whose operations are excessively noisy, the Federal Aviation Administration (FAA) recommends that tenants contact the noise abatement office at that airport. Airport owners are required to monitor noise levels and complaints and submit requests to the FAA for noise abatement flight paths.

You may also lodge aircraft noise complaints by writing the Regional Administrator, FAA Eastern Region Office, JFK Airport, One Aviation Plaza, Jamaica, NY 11434-4809. For more information call 718-995-5755 or visit its website at www.faa.gov/region/aea/noise/frames.htm.

New York City tenants may complain about helicopter noise to the New York City Economic Development Corporation (see "Noise Rules and Resources in New York City"). If you live outside the city, call the Eastern Region Helicopter Council Hotline at 845-353-6050. ■



How to Fight Landlord Discrimination, Harassment and Retaliation

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7he vacancy rate in most areas of New York is so low that some tenants presume that they must put up with bad landlords, just to keep a roof over their heads. Fortunately, there are laws designed to protect rental applicants and tenants from landlords who discriminate, harass or threaten retaliation (such as eviction). Gone are the days that a landlord could legally refuse to rent to a prospective tenant simply because of skin color or religion, or because the tenant had children, was elderly or disabled. So that everyone would have the right to live where they choose, federal, state and local legislatures passed laws prohibiting housing discrimination. Today it is safe to say that unless a landlord has a legitimate business reason to reject a prospective tenant—for example, a poor credit history or terrible references from previous landlords—she risks a potentially risky legal challenge from a tenant claiming discrimination.

Thanks to anti-retaliation laws, all New York tenants also enjoy greater protection from landlords who threaten eviction to “get even” with tenants who report housing violations, organize with other tenants or otherwise assert their rights. Legislation also protects New York City tenants, as well as rent-regulated tenants outside the city, from being harassed, pressured or intimidated into giving up their rental units.

This chapter provides an overview of fair housing laws and explains how victims can fight back against landlord discrimination, harassment or retaliation.



Related topics covered in this book include:

- Legitimate reasons landlords may turn down prospective tenants: Chapter 1
- Apartments covered by rent stabilization and rent control laws: Chapter 4
- Landlord's repair and maintenance obligations: Chapter 9
- Raising landlord discrimination, retaliation or harassment as a defense to a holdover eviction proceeding: Chapter 16.



Model Letters and Sample Forms in This Chapter

- Tenant's Statement of Complaint(s)—Harassment (DHCR Form RA-60H)

Fair Housing Laws Protect Every Aspect of Your Tenancy

Housing discrimination laws offer tenants special protection during the rental application process. But they also protect you during the entire course of your occupancy, and even affect the landlord's right to terminate your tenancy. Every member of the landlord's team who handles your rental application, lease and tenancy must follow fair housing laws. This includes owners, landlords, managers, building superintendents and real estate agents and all of their employees.

Here's a sampling of the types of landlord conduct prohibited by housing discrimination laws:

- advertising or making any statement that indicates a limitation or preference based on race, religion or any other protected category
- falsely denying that a rental unit is available
- setting more restrictive standards for selecting tenants
- refusing to rent to members of certain groups
- before or during the tenancy, setting different terms, conditions, or privileges for rental of a dwelling unit, such as requiring larger deposits of some tenants, or adopting an inconsistent policy of responding to late rent payments
- directing certain tenants to less desirable units, known as “steering”
- during the tenancy, providing different housing services or facilities, such as making a community center or other common area available only to selected tenants, or
- terminating a tenancy for a discriminatory reason.

A. Who's Protected by Fair Housing Laws?

Fair housing laws don't apply to everyone. For instance, as unfair as it may seem, a landlord who refuses to rent to people with red hair or tattoos won't run afoul of the law. To be actionable, the discrimination must be directed against (or unfairly impact) one or more members of a protected class of renters. This section identifies the categories of people who are protected from housing discrimination under federal, state and local fair housing laws. Later sections

explain how to file a discrimination complaint and remedies for a landlord's unlawful behavior.

First, *federal law*. The federal Fair Housing Act and Fair Housing Amendments Act (42 U.S.C. §§ 3601-3619, 3631), which are enforced by the U.S. Department of Housing and Urban Development (HUD), address many types of housing discrimination. They apply to all aspects of the landlord-tenant relationship. The Fair Housing Act prohibits discrimination on the following grounds (called protected categories):

- race or color or religion (Section 1, below)
- national origin (Section 2)
- familial status—includes families with children under the age of 18, pregnant women and elderly persons (Section 3)
- disability or handicap (Section 4), and
- sex, including sexual harassment (Section 5).

Next, *state law*. New York State's Human Rights Law (HRL) (Exec. L. §§ 290 and following), which is enforced by the state Division of Human Rights, prohibits housing discrimination statewide. The state Human Rights Law echoes federal law by outlawing discrimination based on race, color, religion, national origin, familial status, disability and sex. It also adds two more protected categories:

- age (Section 6), and
- marital status (Section 7).

As of mid-2002, state legislation was pending which would add "sexual orientation" to the list of protected categories under the New York State Human Rights Law.

Finally, *New York City law*. The New York City Human Rights Law (NYC Hum. Rights L.: NYC Admin. Code § 8-107), which is enforced by the New York City Commission on Human Rights, prohibits housing discrimination anywhere within the five boroughs. Like state law, it bans landlords from discriminating because of race, color, religion, national origin, familial status, disability, sex, age and marital status. In addition, it outlaws discrimination based on:

- sexual orientation (Section 8)
- lawful occupation (Section 9), and
- alienage or citizenship status (Section 10).



Outside New York City, fair housing laws in many counties and cities also prohibit housing discrimination based on sexual orientation. As of late 2002, "sexual orientation" is a protected category in Onondaga, Nassau, Suffolk and Westchester Counties, as well as in the cities of Rochester, Buffalo and Albany.

In addition, anti-discrimination legislation in New York City, Rochester and Suffolk County includes protection for transgendered individuals (see Section 5, below).

In some cases, federal, state and local fair housing laws will overlap or be interpreted differently. In the sections that follow, we'll look at each of the categories of illegal discrimination and explore their obvious and not-so-obvious meanings.

Exemptions to Fair Housing Laws

Fair housing laws are far reaching and apply to almost every rental unit in the state. But there are a few exceptions:

- Owner-occupied buildings with two or fewer units and single-family housing are exempt from federal, state and New York City fair housing laws, unless the landlord makes the rental unit available to the public through advertising, real estate listings (by a broker) or public notice. In practice, this means that the landlord will have to make his vacancies known through word of mouth or other personal communications (such as letters to friends).
- Certain types of housing operated by religious organizations that limit occupancy to their own members are exempt from federal, state and New York City laws prohibiting religious discrimination.
- Single-sex housing accommodations (such as female- or male-only dormitories or rooming houses) are exempt from state and New York City laws prohibiting sex discrimination.
- Certain housing reserved exclusively for either senior citizens (persons 62 years of age or older) or households with at least one person 55 years of age or older are exempt from age discrimination laws.



Fair housing laws apply to co-ops and condos, too. The rental of a co-op or condo apartment is almost always subject to the review and approval of the building's board of directors. Like landlords, directors are subject to fair housing laws and may not illegally discriminate against a member of a protected category. (*Broome v. Biondi*, 17 F.Supp. 2d 211 (S.D. N.Y., 1997).)

A co-op or condo board may set its own policies as long as they're not discriminatory. For example, the co-op board at a large apartment building on Manhattan's Upper West Side prohibits people who smoke from renting or buying apartments in the building, for health reasons.

1. Race or Religion

Federal, state and New York City law prohibits landlords from treating you differently because of your race or religion. Landlords who rent only to members of one religion or race are obviously acting illegally. So are those who require a higher security deposit from African-American tenants, for instance. It is unlawful for landlords to question prospective tenants about their skin color, complexion, coloring, or race or to request a photo or any document that identifies their race. The same is true for questions about your religious denomination or affiliation, temple, parish, church or which religious holidays you observe. After your rental application is approved, however, a landlord may legally ask for photo identification at the time the lease is signed. This is to make sure that you are the same person whose name appears on the application.

More subtle forms of discrimination based on race or religion are also prohibited. Comments that are intended to discourage you from applying or to steer you to another location—such as: “You wouldn't feel comfortable in this neighborhood,” or “I have an apartment in another area where I'm sure you'd feel right at home”—are also illegal.

2. National Origin

As with race or religion, discrimination based on national origin is illegal, whether it's practiced openly and deliberately or unintentionally. Under state and New York City law, national origin specifically includes a person's “ancestry,” that is, the national origin of a person's parents, grandparents and other ancestors. You don't have to answer discriminatory questions like “What kind of name is that?” or “Where were your parents born?”

Questions about your lineage, descent, native language, parentage, nationality or the nationality of your spouse or any other family member are unlawful. Landlords may not require you to submit a passport, naturalization or citizenship papers or a green card, since these documents identify national origin.

Similarly, policies or practices that single out people of a particular nationality are illegal. For instance, a landlord who conducts credit checks only on Haitians has a selective policy that constitutes illegal discrimination. On the other hand, a policy requiring credit checks of all prospective tenants would not be discriminatory.

Discriminatory comments as well as policies are illegal too, as one New York owner learned the hard way. The landlord told a Honduran applicant that she couldn't rent an apartment because “Spanish people ... like to have loud music.” The applicant sued the landlord for the discriminatory statement. A federal court ordered the landlord to pay \$25,447 in damages: \$7,000 to compensate her for her losses, \$9,736 for attorney fees, \$2,111 for court costs and \$6,000 to penalize the landlord for making the discriminatory comment. (*Gonzales v. Rakkas*, 1995 WL 451034 (E.D. N.Y., 1995).)

3. Familial Status and Number of Occupants

Federal, state and NYC fair housing laws prohibit familial status discrimination. This includes openly refusing to rent to families with children under 18 or to pregnant women. Rental application or interview questions about the number of people who will occupy the unit are lawful, but asking, “Will children be occupying the unit?” or “State the age and sex of children who will be living in the rental unit,” are illegal. Charging additional rent for each child is also unlawful, as is requiring an interview with or photo of the applicant's entire family. It would be acceptable, however, to charge more rent for more occupants if the formula was non-discriminatory (based on the number of heads, not age) and wasn't applied to rent-regulated units.

Setting overly restrictive occupancy requirements is also illegal—for example, decreeing that children of a certain age must have separate rooms, thereby preventing families with children from occupying smaller units. Using this ploy, a landlord might rent a two-bedroom unit to a husband and wife and their one child, but would not rent the same unit to a mother with two children. This practice, which has the effect of keeping all (or most) children out of a landlord's property, would surely be found illegal in court and would result in monetary penalties.

It is also illegal for landlords to allow families with children to occupy only ground-floor units, or to

designate certain apartments or buildings within an apartment community as “family” units.



State law sets strict penalties for discriminating against families with children.

In response to widespread discrimination against families with children in New York, the state legislature passed a special law making it a criminal misdemeanor for landlords to ban children from their properties or reject applicants solely because they have a child or children (no matter how old the child is). (RPL § 236-a; see also RPL § 235-f (permitting tenants to share rental units with members of their immediate family).) Landlords who ban kids (or reject applicants because they have kids) can not only get hit with criminal charges and penalties, but can also get sued for money damages, including attorney fees. The only properties exempt from the law are owner-occupied one or two-family dwellings; senior citizen housing that’s subsidized, insured or guaranteed by the federal government and mobile home parks; exclusively for persons 55 or over.

The Roommate Law: Don’t Let Landlords Set Illegal Occupancy Limits

To prevent overcrowding, some landlords try to limit the number of persons who can occupy a rental unit. But federal and state laws restrict a landlord’s ability to cap the number of occupants who may share a dwelling.

Federal fair housing law prohibits landlords from limiting the number of *children* who may live in a rental unit. However, “reasonable” restrictions may be established on the number of *occupants* per unit, to prevent overcrowding. While HUD has said that a policy of two persons per bedroom will, as a general rule, be considered reasonable, state law (which your landlord must follow) is far more generous to tenants.

New York’s “Unlawful Restrictions on Occupancy” law (commonly known as the “Roommate Law”) prohibits landlords from limiting occupancy of a rental unit to just the tenant named on the lease or rental agreement or to the tenant and the tenant’s immediate family. (RPL § 235-f.) Chapter 7, Section A, explains how the state Roommate Law works, as well as how local health and safety codes may limit overcrowding.

4. Disability

Federal, state and New York City law makes it illegal for landlords to discriminate against people who:

- have a physical or mental disability that substantially limits one or more major life activities—including, but not limited to hearing, mobility and visual impairments; chronic alcoholism (but only if it is being addressed through a recovery program); mental illness; HIV-positive, AIDS, AIDS-Related Complex and mental retardation
- have a history or record of such a disability, or
- are regarded by others as though they have such a disability.

a. Recovering Alcoholics

A landlord may not refuse to rent to a so-called “recovering alcoholic” simply because of his status as an alcoholic—there must be specific facts other than his status as an alcoholic in recovery that render him unfit as a tenant.

EXAMPLE: Your personal history includes a disquieting note: Employers and past landlords let prospective landlords know that you have a serious drinking problem that you are dealing with by attending AA meetings. You have not lost a job or a place to live due to your drinking problem. Can a prospective landlord refuse to rent to you for fear that you will drink away the rent, exhibit loud or inappropriate behavior or damage his property? No, unless the landlord can point to specific acts of misbehavior or financial shakiness that would sink any applicant, regardless of the underlying cause. Fears alone that this might happen (however well-founded) will not legally support a landlord’s refusal to rent to you.

Unfortunately, the agencies that enforce discrimination laws have not been very helpful in explaining what steps an alcoholic must take in order to qualify as “recovering.” Regular attendance at AA meetings and counseling probably qualify, but an alcoholic who is less conscientious may not make the grade.

b. Drug Users

Under housing discrimination laws, a person who has a past drug addiction is classed as someone who has a record of a disability and, as such, is protected under fair housing laws. A landlord may not refuse

to rent to someone solely because he is an ex-addict, even if that person has felony convictions for drug use. Put another way, a landlord's fear that the person will resume his illegal drug use is not sufficient grounds to reject the applicant. Bad credit or negative references would be grounds for rejecting an ex-addict, as they would be for any prospective tenant.

On the other hand, if an applicant has felony convictions for dealing or manufacturing illegal drugs, as distinct from convictions for possession of drugs for personal use, the landlord may use that history as a basis of refusal. New York law permits landlords to terminate a tenancy on the ground that the tenant uses the rental unit for the sale of illegal drugs or narcotics. For details, see Chapter 16, Section D.

No "Approved List of Disabilities"

The physical and mental disabilities that are covered by the Fair Housing Acts range from the obvious (wheelchair use and sensory disabilities) to those that may not be so apparent. The law protects applicants and tenants with invisible disabilities such as multiple chemical sensitivities, mental illness, past drug use and those who are HIV-positive. (*Bragdon v. Abbott*, 118 S.Ct. 2196 (1998).)

The list of groups protected by the law is not, however, set in stone. Tenants with hypertension have been known to ask for protection under the fair housing laws, as have tenants suffering from "building material sensitivity" (sensitivities to vapors emitted from paint, upholstery and rugs). Similarly, tenants who have a sensitivity or health problem that is widespread throughout the population, such as asthma or allergies, may also win coverage under the fair housing laws.

If you have any questions as to whether a particular condition is a legally accepted disability, contact your local HUD office, the New York Human Rights Commission or the New York City Human Rights Commission (see "More Information: Government Agencies That Enforce Fair Housing Laws," below).

c. Mental or Emotional Impairments

Like recovering alcoholics or past drug users, applicants and tenants who had, or have (or appear to

have) mental or emotional impairments must be evaluated and treated by landlords on the basis of their financial stability and histories as tenants, not on the basis of their mental health status.

d. Questions and Actions That May Be Considered Discriminatory

A landlord may not ask a prospective tenant, "Do you or any member of your family have a disability?" "Are you capable of independent living?" "Have you ever been treated for any of the following diseases ...?" "Do you have now, or have you had, a drug or alcohol problem?" Nor may the landlord request confidential documents such as your medical records or doctors' reports. If it is obvious that someone is disabled—for example, the person is in a wheelchair or wears a hearing aid—it is illegal for the landlord to inquire how severely he is disabled.

If you are applying for housing specifically for people with disabilities, a landlord may ask if you qualify for such a unit, as discussed below. Or, if you request a reasonable accommodation to modify a rule, policy or practice at the property based on your disability, such as asking to keep a service animal at a building with a no-pets policy, the landlord may request a letter from your physician, or other health professional, verifying your need for the requested accommodation.

Landlords may not steer disabled applicants to units they think would be more appropriate. No matter how well-intentioned, the landlord cannot make decisions about how and where you will live on the property (the ground floor versus three stories up) that he would not make were you not disabled.

e. Rent Discounts

While the general rule is that landlords can't discriminate against the disabled in the terms and conditions or privileges of a tenancy, they may, however, offer rent discounts to disabled tenants. (Exec. L. § 296(17).) Rent discounts aren't mandatory. The landlord may offer one to disabled tenants, but isn't required to do so. Landlords have discretion over how big a discount to offer (if any). There aren't any statutory guidelines on the size of the discount.

f. Accessibility Requirements

Under federal, state and New York City fair housing laws, landlords are required to:

- make “reasonable accommodations” for disabled tenants, at the landlord’s expense. (42 U.S.C. § 3604(f)(3)(B); Exec. L. § 296(18)(3); NYC Admin. Code § 8-102(18)), and
- allow disabled tenants to make reasonable modifications of their living unit and the common areas at their expense if that is what is needed for the person to comfortably and safely live in the unit. (42 U.S.C. § 3604(f)(3)(A); Exec. L. § 296(18); NYC Admin. Code § 8-102(18).)

Here’s an overview of accessibility requirements for the disabled. For specifics, contact HUD or one of the fair housing agencies listed in “More Information: Government Agencies That Enforce Fair Housing Laws,” below.

Accommodations

To accommodate a disabled tenant, the landlord is expected to adjust rules, procedures or services where reasonable and necessary to give the tenant an equal opportunity to use and enjoy a dwelling unit or a common space. Reasonable accommodations include such things as:

- Parking—if the landlord provides parking in the first place, you can expect him to provide a close-in, spacious parking space for a disabled tenant. (See for example, *Shapiro v. Cadman Towers*, 51 F.3d 328 (2d Cir. 1995.) This case required a co-op to reasonably accommodate a shareholder-tenant with multiple sclerosis by providing an accessible parking spot.)
- Service animals—if there is a no-pets policy, making an exception for disabled tenants who need specially trained guide dogs, hearing dogs or an emotional-support pet.
- Rent payment—allowing a special rent payment plan for a tenant whose finances are managed by someone else or by a government agency.
- Reading problems—arranging for management to read all communications from the owner to a blind tenant.

Landlords are generally expected to pick up the tab for the costs of the accommodation unless the expense would place an undue hardship on their business. For example, a federal court ruled that a landlord could refuse a tenant’s request for a wheelchair lift estimated to cost between \$25,000 and \$50,000, since the landlord had incurred financial losses in operating the building in the three years

prior to the request. (*Rodriguez v. 551 West 157th Owners Corp.*, 992 F.Supp 385 (S.D. N.Y. 1998).)

Modifications

Allowing a disabled person to modify his living space to the extent necessary to make it safe and comfortable is also required, as long as the modifications will not make the unit unacceptable to the next tenant, or the disabled tenant agrees to undo the modification when he leaves. Examples of modifications undertaken by disabled tenants include:

- lowering counter tops for a wheelchair-bound tenant
- installing special faucets or door handles for persons with limited hand use
- modifying kitchen appliances to accommodate a blind tenant, and
- installing a ramp to allow a wheelchair-bound tenant to negotiate two steps up to a raised lobby or corridor.

The tenant must get the landlord’s prior approval and bear all of the costs for modifications to the rental unit. The landlord is entitled to ask for a detailed description of the proposed modifications, proof that they will be done in a workmanlike manner and evidence that you will obtain any necessary building permits. If you propose to modify the rental unit to an extent that will require restoration later when you leave (such as repositioning the kitchen counters), the landlord may request that you pay into an interest-bearing escrow account the amount estimated for the restoration. (The interest belongs to you, the tenant.)

Verification

If you ask for an accommodation or want to modify your dwelling to accommodate your disability, your landlord may ask for proof—for example, from your physician—that the proposed accommodation or modification is necessary for you to live safely and comfortably on the rental property. Say, for example, that you ask the landlord to make an exception to the no-pets policy for Fifi, your “emotional support” poodle. The landlord may legally request a letter or other proof from your doctor, psychologist or social worker that: 1) you are a patient or client, and 2) you need Fifi to live with you to accommodate your disability. It is not necessary for your doctor to explain the nature or details of your disability to your landlord. That’s between you and your doctor.

5. Sex and Sexual Harassment

Under federal, state and New York City law, a landlord may not refuse to rent to a person on the basis of gender—for example, because you are female. Neither may a landlord impose special rules on someone because of their gender—for example, limiting upper-story apartments to single females. Asking about your gender or requesting a document that would reveal gender is unlawful.



Landlords may not discriminate against transgendered individuals. New York City has long prohibited housing discrimination based on actual or perceived gender. Since April 30, 2002, the definition of gender includes “a person’s gender identity, self image, appearance, behavior or expression, whether or not that gender identity, self image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.” Similar legislation has been enacted in Rochester and Suffolk County.

Illegal sex discrimination also includes sexual harassment—refusing to rent to an applicant who resists the landlord’s sexual advances, or making life difficult for a tenant who has resisted such advances. Sexual harassment may include unwanted touching, verbal suggestions and threats or innuendoes that repairs, required services or the granting of an apartment are conditioned on you complying with the sexual advances of the landlord or other building personnel.



Call the police if the harassment rises to the level of a physical attack, or if you feel physically threatened. There are criminal laws that protect tenants from these forms of harassment. For more information, see Section C, below.

6. Age

Both New York State and New York City prohibit age discrimination. (Exec. L. § 296; NYC Admin. Code § 8-107.) Questions such as, “How old are you?” “What is your date of birth?” “What are the ages of your children?” are illegal, as are requirements that you submit a birth certificate, driver’s license or any other document that reveals your age. Once you are approved, it is customary (and lawful) for landlords

to ask for photo identification at the time the lease is signed so as to make sure that you are the same person who applied for the unit.

We are reminded often that ours is an aging society. With the increase in the number of older adults comes the need for appropriate housing. Some older tenants may not, however, be able to live completely independently—for example, they may rely on the regular assistance of a nearby adult child or friend. Can the landlord refuse to rent to an older person solely because he fears (absent any evidence from a previous landlord) that the applicant’s frailty or dimming memory will pose a threat to the health or safety of the rest of his tenants? Or, can a landlord favor younger tenants over equally qualified elderly tenants because he would like the property to have a youthful appearance? The answer to both of these questions is “No.”

While the general rule is that a landlord can’t discriminate in the terms and conditions or privileges of a tenancy on the basis of an applicant’s age, a landlord may offer rent discounts to people 65 years of age or older. (Exec. L. § 296(17).) And, certain types of senior citizen housing are exempt from fair housing laws—that is, they can restrict tenants to only senior citizens. Landlords may inquire as to the age of an applicant for rental housing designated for senior citizens only, or for people over the age of 55, to make sure they qualify. See “Exemptions to Fair Housing Laws,” above.

If You’re a Minor

You may wonder whether the prohibition against age discrimination applies to minors (people under age 18). A minor applicant who is legally “emancipated”—someone who is legally married, has a court order of emancipation or is in the military—has the same status as an adult. This means she’s entitled to be treated like any other adult. In short, if a minor applicant satisfies the rental criteria applied to everyone else, a refusal to rent to a minor could support a fair housing complaint. On the other hand, if you are not emancipated, you lack the legal capacity to enter into a legally binding rental agreement with the landlord, and the prohibitions against age-related discrimination do not apply. (Exec. L. § 296(5)(f); NYC Admin. Code § 8-107(5)(g).)



In some situations, senior citizens who are rent-stabilized and rent-controlled tenants are also entitled to protection from rent increases (see Chapter 4, Section E) and from eviction (see Chapter 16, Section F).

7. Marital Status

Both New York State and New York City prohibit “marital status” discrimination. (Exec. L. § 296; NYC Admin. Code § 8-107.) Oddly though, protection extends only to married couples, meaning that the landlord may not prefer single, platonic co-tenants (or one-person tenancies) over married couples. The protection doesn’t work the other way—single tenants can’t claim “marital discrimination” if they encounter a landlord who chooses a married couple instead of single tenants.

Single tenants who are turned away in favor of a married couple may, however, have other grounds to complain. Although a “married couples only” policy won’t expose the landlord to a charge of discrimination on the basis of marital status, it may be discriminatory on the basis of sexual orientation. (*Hudson View Properties v. Weiss*, 59 N.Y.2d 733 (1983).) Sexual orientation is a protected category in New York City, Buffalo, Rochester and Albany, and in Onondaga, Nassau, Suffolk and Westchester Counties. For example, in *Levin v. Yeshiva University*, 96 N.Y.2d 484, 730 N.Y.S.2d 15, (N.Y. 2001), a judge decided that a school’s policy of limiting housing to medical students and their spouses and children discriminated against single students on the basis of their sexual orientation.

A single tenant or unmarried couple might also get around a “married couples only” restriction under New York’s “Roommate Law,” which requires landlords to permit single tenants to share their units with an *unrelated* occupant. (RPL § 235-f; Chapter 7, Section B, covers the Roommate Law in detail.) If the landlord signs a lease or rental agreement with one unmarried tenant, for instance, he can’t stop that tenant from later inviting a friend or lover to move into the unit.

According to the New York State Attorney General’s Office and the New York State Division of Human Rights, landlords should refrain from asking questions about a prospective tenant’s past or present marital status or future plans for marriage. (Opinion of the N.Y. Att. Gen. 85-F45.) Questions such as, “Are you married? Single? Divorced? Separated?” are unlawful,

as are requests for documents such as marriage certificates, divorce decrees or separation papers.

8. Sexual Orientation

Federal and state law doesn’t specifically prohibit housing discrimination based on sexual orientation, but New York City law does. It defines sexual orientation to mean “heterosexuality, homosexuality, or bisexuality.” (NYC Admin. Code §§ 8-102(20); 8-107(5).) (Transgendered individuals are protected under New York City’s definition of the term “gender.” See Section 5, above.) That means that a landlord can’t refuse to rent to a single applicant, or to a couple, because he knows or suspects that the applicants are gay, lesbian or straight. The landlord can’t ask you about your sex life, nor may he refuse to rent to you because he doesn’t understand or condone your sexual orientation.

9. Lawful Occupation

New York City landlords may not reject prospective tenants based on their chosen occupation or the type of work they do. (NYC Admin. Code § 8-107(5)(n).) The law only applies to lawful occupations, which means that the landlord may reject applicants who engage, or have engaged in, illegal occupations such as prostitution, drug dealing or gambling.

EXAMPLE: Jane, a lawyer, applied for an apartment and returned her application to Lee, the landlord. Lee had spent the better part of the last year fighting a frivolous lawsuit brought by a former tenant who was also a lawyer, and the thought of renting to another lawyer was more than Lee could bear. Jane’s credit, rental and personal references were excellent, but she was turned away. Under New York City law, Jane may file a complaint against the landlord with the NYC Human Rights Commission, and be entitled to the apartment she was denied, as well as to monetary compensation and attorney fees.

10. Alienage or Citizenship Status

New York City landlords may not prefer U.S. citizens to non-citizens, nor may they base a rejection on the immigration status of a person who is not a citizen

or national of the United States. (NYC Admin. Code § 8-107(5)(a).) According to the NYC Commission on Human Rights, questions such as “Do you have a green card?” or “Are you legally permitted to work in this country?” are off-limits. Discrimination based on one’s “alienage status” (that is, whether a non-citizen is considered a legal alien or an illegal alien under immigration laws), which is prohibited in New York City, is different from discrimination based on one’s

national origin (discussed in Section 2, above), which is prohibited everywhere in the United States.

The only exception is for public and government subsidized housing programs (such as the “Section 8 Housing Program”) which require eligible tenants to be U.S. citizens or of eligible immigration status. (NYC Admin. Code § 8-107(14).) In such cases, inquiries about an applicant’s citizenship and immigration status will not violate New York City law.

Your Landlord and the Fight Against Terrorism

In May 2002, the FBI told their field offices to alert local law enforcement, housing authorities, landlords and management personnel of a possible threat against residential rental properties from terrorists. Apparently, the FBI had very vague information that terrorists had discussed rigging apartments with explosives. In particular, landlords were asked to be on the lookout for tenants who pay the entire rent in advance or who break a lease under suspicious circumstances and leave no forwarding address.

This announcement naturally engendered concern and lots of questions. In particular, landlords and managers wondered what steps they could take to reduce the chances that terrorists may be living in their properties. Conscientious landlords, however, are aware that they must not violate fair housing laws by targeting certain ethnicities or asking illegal questions. If you find yourself the subject of illegal questions or treatment, no matter what the landlord’s motivation, avail yourself of the remedies explained throughout this chapter.

Your options may be a bit different, however, if your landlord has acted after being contacted by law enforcement. The USA PATRIOT ACT (PL 107-56), signed in November 2001, authorizes the FBI to obtain “tangible things,” including books, records or other documents, for use in terrorism investigations. The FBI must, however, have an order issued by a U.S. magistrate. A landlord may not be sued if he cooperates in good faith pursuant to this section. How-

ever, the landlord may not disclose to anyone else that this information has been gathered.

Landlords have even broader immunity against lawsuits by tenants when they cooperate with law enforcement’s anti-terrorism efforts. The PATRIOT ACT also amended the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. Section 1805) to specifically assure landlords that they may not be sued by tenants when they “[furnish] any information, facilities, or technical assistance in accordance with a court order or request for emergency assistance under this Act.” (USA PATRIOT ACT, Title II, Section 225.) While careful landlords will ask for a subpoena or warrant before they turn over tenant records or otherwise make their property (or yours) available to law enforcement, they need not do so if their only fear is a lawsuit from the affected tenants.

How does this information affect the thousands of law-abiding tenants? Hopefully, not at all—your landlord will continue to exercise good judgment and careful screening procedures, which will help weed out those who might pose a threat. But an overly zealous landlord could easily cross the line, subjecting some tenants to discriminatory practices; and law enforcement, too, might use their powers in a heavy-handed way that oversteps even the generous boundaries given them by Congress. If you feel that your rights have been violated, contact one of the government agencies that enforce fair housing laws. (See “More Information: Government Agencies That Enforce Fair Housing Laws,” below).

Illegal Questions on Rental Applications

Unfortunately, a lot of landlords use outdated rental application forms with questions that the New York State Division of Human Rights would consider unlawful. Should you refuse to answer potentially discriminatory questions or hand over documents such as your driver's license? That's a tough call. You'll need to trust your instincts. You'll run into some landlords who are simply using outdated forms or asking unlawful questions with no discriminatory motive. But others may be less innocent. The important thing to remember is that if a landlord refuses to rent to you for a discriminatory reason or because you have refused to answer a potentially discriminatory question, you may file a fair housing complaint against the landlord. Section B, below, explains how.

B. How to Fight Discrimination

Fair housing laws prohibit intentional discrimination based on race, color, religion and other protected categories, as explained in Section A, above. Intentional discrimination is an outright refusal to rent to an applicant or provide services to a tenant because they belong to a certain race, religion or other protected category. That's easy to understand. Now here's the hard part: Subtler, unintentional forms of discrimination are illegal too, if they have the effect of unfairly impacting a protected group. For instance, a policy that requires single women to have a co-signer on their lease, but doesn't impose the same requirement for single men, unfairly affects women (a protected category of applicants) and is illegal.

If you believe you've been a victim of illegal discrimination (which includes sexual harassment), don't stew over it. You may take action by filing a discrimination complaint against the landlord with a federal, state or local government agency, or you can bring a private lawsuit against the landlord in court. This section looks at both options.

1. Filing a Discrimination Complaint With a Government Agency

You may file a discrimination complaint with the U.S. Department of Housing and Urban Development

(HUD) if you think a federal law has been violated, or with the New York State Division of Human Rights if a state anti-discrimination law has been violated. If the discrimination took place in New York City, you can file your complaint with the New York City Human Rights Commission. All of these agencies are authorized to investigate housing discrimination complaints and, if necessary, bring legal action against the landlord. If discrimination took place, each agency is also authorized to order the landlord to pay money damages to you and penalties to the government (Section 3 below has details).

Your complaint to any of these agencies must be made within one year of the discriminatory incident. (If it's been longer than one year, you may be able to file a lawsuit instead (see Section 2, below). There is no charge to file your complaint. Nor do you need to hire a lawyer, since agency attorneys litigate the case on your behalf.

a. Where to File

When a housing discrimination complaint is filed with HUD about an incident that took place in New York, there's a good chance it will be referred to the New York State Division of Human Rights to be investigated and resolved, under a 1999 agreement between New York and the federal government. To save time, you may wish to file your complaint directly with the State Division of Human Rights (which takes less than a year to resolve most complaints) instead of HUD (which takes longer), since a complaint filed with HUD may end up in New York anyway. If the discrimination was based on your age or marital status, you can't file a complaint with HUD, since federal law doesn't protect those categories.

If the discrimination occurred in New York City, you may file your complaint with the New York City Human Rights Commission or with the state. But if the discrimination was based on sexual orientation, lawful occupation or alienage or citizenship status, you *must* file with the city, since state law doesn't protect those categories.

If the discrimination took place outside New York City and that locality has enacted anti-discrimination laws, you may wish to file your complaint with a local fair housing agency. The clerk for the municipality should be able to let you know if there is such an agency.

b. Simplified Filing Procedures

The procedure to file a complaint varies depending on which agency you have chosen, but is always relatively simple. (See “More Information: Government Agencies That Enforce Fair Housing Laws,” below.) Once you have filed your complaint, all agencies follow the same basic procedure. First, the complaint is investigated. If the investigation suggests that a fair housing law violation has probably occurred, the agency proceeds with the case. (If not, it dismisses your complaint.) The agency then attempts conciliation (settlement) with the landlord. For example, you might agree to drop your complaint in exchange for your landlord’s agreement to rent you an apartment and pay you a sum of money. If the case cannot be settled, you or the landlord may have the case heard before the agency (you or the landlord can also elect to go to court). Getting your case heard and decided by an agency tribunal is quicker than going to court, but if either you or your landlord prefer to go to court, that is where the case must be heard.

If discrimination is found, the landlord may be ordered to pay damages or civil penalties, among other remedies, as explained below in Section 3.

2. Going to Court

Instead of filing a complaint with a government agency, you may instead privately file suit against the landlord in federal or state court, at your own expense. If you have experienced clear and outrageous discrimination, going directly to court may be

quicker and more rewarding than going to a government agency. Or if more than one year has elapsed since the discrimination occurred, going to court may be your only option. Federal claims must be filed within two years of the alleged discrimination. New York State gives victims of discrimination up to three years to file suit.



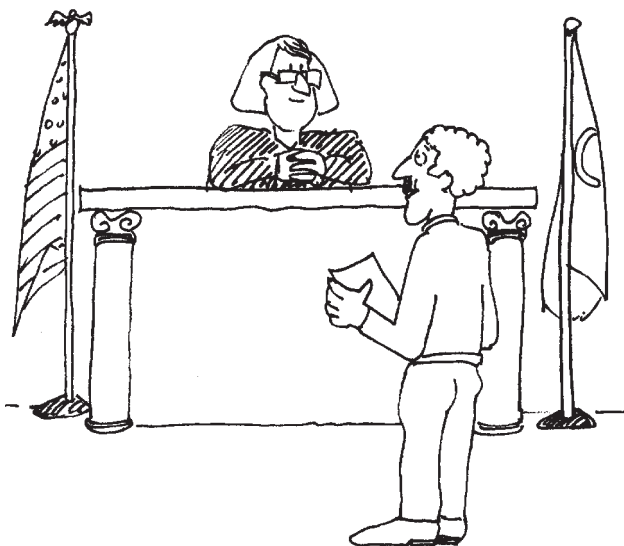
Discrimination lawsuits can be difficult to plead and prove.

If you decide to go right to court, hire an experienced attorney to represent you. Chapter 19 explains how to get legal help from community legal services and private lawyers. If you have a strong case, an attorney may take it “on contingency.” This means that you pay nothing up front but agree to give the attorney a percentage, usually a third or less, of whatever you win or agree to in a settlement.

3. Favorable Outcome: What You’ll Get

If an administrative judge or a court finds that the landlord (or one of the landlord’s agents or employees) discriminated against you, there are a variety of remedies that may be ordered as compensation for your injury. The order might direct the landlord to do one or more of the following:

- rent a specific rental unit to you
- pay money damages to you, including any additional rent you had to pay elsewhere as a result of being turned down, plus damages for humiliation or emotional distress you suffered
- pay punitive damages to you (extra money as punishment for especially outrageous discrimination) and your attorney fees
- in the case of a disability violation, retrofit the property or set up an escrow fund to be used for retrofitting in the future, or
- pay a penalty to the federal, state or local government. The maximum penalty under the federal Fair Housing Acts is \$10,000 for a first violation and \$50,000 for a third violation within seven years. (42 U.S.C. § 3613(g)(3).) New York State law now permits civil fines and penalties of up to \$50,000 and up to \$100,000 for acts found to be willful, wanton or malicious. (N.Y. Exec. L. 297.5(vi).) The New York City Human Rights Commission may order a penalty of up to \$100,000 upon a finding of an unlawful discriminatory practice. (NYC Admin. Code § 8-126.)



More Information: Government Agencies That Enforce Fair Housing Laws

If you think you may have been discriminated against or have a question about your fair housing rights, contact the appropriate agency listed below.

Federal housing law. For more information on the rules and regulations of the Fair Housing Act (42 U.S.C. §§ 3601-3619, 3631) and assistance on accessibility requirements for the disabled, contact HUD's Information Distribution Center at 800-767-7468, or check the HUD website at www.hud.gov. HUD has several ways you can file a fair housing complaint: You can go to the HUD website and file an online complaint electronically, file a complaint by phone by calling 800-669-9777, or print out a form from the HUD website and mail it to: Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5204, 451 Seventh St., SW, Washington, DC 20410-2000. Or, you can write HUD a letter with your name and address, the name and address of the person your complaint is about, the address of the apartment you rent or were trying to rent, the date when this incident occurred and a short description of what happened, and mail it to HUD's Regional Fair Housing Hub office at 26 Federal Plaza, Room 3532, New York, NY 10278, tel. 212-264-5072. There are no regional offices outside New York City.

State housing law. For more information on the rules and regulations of New York State's Human Rights Law (Executive Law §§ 290 and following), contact the New York State Division of Human Rights Headquarters at 718-741-8400, or check their website at www.nysdhr.com. To file a complaint, call or visit one of the Division's regional offices, listed in Appendix A.

New York City law. For more information on the rules and regulations of New York City's Human Rights Law (NYC Admin. Code § 8-107), contact the New York City Commission on Human Rights 40 Rector Street, 9th Floor, New York, NY 10006, tel. 212-306-7500; or you can check their website at www.ci.nyc.ny.us/html/cchr/home.html. A list of Community Service Centers is in Appendix A. Discrimination complaints must be filed with the Commission's Law Enforcement Bureau, located in lower Manhattan at 40 Rector Street, 9th Floor, between 10:00 a.m. and 4:00 p.m. Monday through Thursday and between 10:00 a.m. and 3:00 p.m. on Friday. You must make an appointment for an intake interview by calling 212-306-7450. If you are unable to travel to the Bureau's offices, an investigator will conduct an interview with you by telephone or will arrange a home visit.

C. How to Fight Landlord Harassment

Harassment against tenants can take a variety of forms—none of which are pretty. For some unfortunate tenants, verbal abuse, intentional service shut-downs and even physical threats from landlords are a fact of life. The harassment may be designed to coerce the tenant to agree to move to a less desirable apartment at the same property, or to move out entirely. Harassment may also be triggered by a tenant's legitimate housing complaint to a government agency or court. Landlords have also been known to embark on building-wide campaigns of harassment

in an attempt to empty a property of tenants and occupants in order to sell the building, demolish it or perform a large scale renovation project.

One way for tenants to respond to harassment is to move out and move on. But in and around New York City, relocation is not a realistic alternative. Good rentals are in short supply. And for many, moving out means giving up a valuable rent-regulated tenancy. Fortunately, there are some anti-harassment laws that protect New York City tenants and rent-regulated tenants statewide. Non-regulated tenants outside New York, however, have few alternatives, outside of calling the police. If you live in a non-regulated

unit outside the City, speak with your local government clerk to see if there are any local laws that protect tenants from landlord retaliation.

1. Rent-Regulated Tenants May File DHCR Harassment Complaint



Skip this section if rent stabilization or rent control laws do not cover your unit. If you're not sure about coverage, go to Chapter 4.

So long as they pay rent, rent-regulated tenants are protected from eviction and generally may remain in their apartments for the long haul. (Chapter 16 specifies the reasons rent-regulated tenants can be evicted.) When a rent-stabilized or rent-controlled tenant moves out, landlords are entitled to generous rent increases. As a result, landlords have an economic incentive to get rent-regulated tenants to give up their apartments. Motivated by greed, unscrupulous landlords have been known to make life miserable for rent-regulated tenants, in an effort to force them out.

Fortunately, state laws and regulations prohibit landlords from “harassment”—any conduct designed to force a rent-regulated tenant to move out. (9 NYCRR §§ 2105.8, 2205.1, 2206.9(a), RSC § 26-516.) Such conduct includes:

- threats of physical violence to you, your roommates or your family members
- building or apartment lock-outs (your key no longer opens the entrance door to the building or your apartment)
- deliberate interruptions or discontinuance of electrical, water, heat or garbage removal service, or
- repeated, baseless eviction proceedings brought against you.

a. How to File a DHCR Harassment Complaint

Obtain a “Tenant Statement of Complaint(s)—Harassment” (DHCR Form RA-60H) from the local DHCR office or from the agency’s website. A sample is shown below. To obtain a copy of this harassment complaint form, call the State Division of Housing and Community Renewal (DHCR)’s InfoLine 718-739-6400; download the form from the agency’s website (www.dhcr.state.ny.us) or visit your local DHCR office (Appendix A has a list of addresses).

The form includes general questions on your tenancy and your rental unit. It also asks specific questions as to construction activity at your building and whether any rental units in your building are being kept off the market (vacant). The form asks you to describe the “nature” of the harassment. When you complete this part of the form, bear in mind that a successful harassment complaint cannot be based on a single, isolated incident. For example, it’s not harassment when a landlord shuts down the boiler for three days in order to replace it, and then provides heat continuously during the rest of the heating season. It’s also not harassment if your super loses his temper with you one afternoon and calls you “crazy.” But if your landlord shuts down the boiler every weekend, or the super verbally abuses you every time you ask for a repair—that’s harassment. You must claim and be able to show a *willful* interruption in essential services and a *continuing course of conduct* by the landlord, manager or building personnel that interferes with or disturbs your tenancy.



When you fill out the form, consider including the italicized words above in your narrative to clarify the nature of the harassment.

Don’t limit yourself to the space on the form. The DHCR form doesn’t give you much room to write down what happened. Feel free to attach a detailed letter that explains the nature of the harassment. Also, try to support your claims with documentation—for example, copies of letters or notes you may have received from the landlord, or a log listing the dates and times of any deliberate service reductions, eviction threats or other incidents of harassment. Your complaint should claim (and demonstrate, if possible) that there has been an attempt on the part of the owner to force or intimidate you to vacate your apartment or to give up the protections afforded by rent regulation. If you merely claim that the landlord has reduced services to your apartment or to the building, the DHCR harassment unit could (and probably will) forward your complaint to the DHCR unit that handles service reductions. Chapter 9 discusses required and essential services and DHCR rent-reduction applications for individual apartment and building-wide service reductions.

	State of New York Division of Housing and Community Renewal Office of Rent Administration www.dhcr.state.ny.us	Enforcement Unit Gertz Plaza 92-31 Union Hall Street Jamaica, New York 11433	Docket Number: _____
Tenant's Statement of Complaint (s) - Harassment			
Declaracion Del Inquilino Por Violaciones (Hostigamientos) Part I (Must be filled in completely in every case) (Debe ser llenada completamente en cada caso)			
Mailing Address of Tenant:		Mailing Address of Owner:	
Name: _____		Name: _____	
Number/Street: _____ Apt. No.: _____		Number/Street: _____	
City, State, Zip: _____		City, State, Zip: _____	
Telephone Number: () () (Residence) (Business)		Telephone Number: () () (Residence) (Business)	
Address of Building (if different from above):		Name and Address of Managing Agent (if different from above):	
Number/Street City, State, Zip Code		Name: _____	
(Complete this box in all cases)		Number/Street: _____	
		City, State, Zip: _____	
Apt. No. & Location (as "no. 3, second floor front", etc.)		Telephone Number: ()	
(Insert an address where you can be reached if you leave your present address)			
Are you a SRO (Single Room Occupancy) tenant? Yes ☐ No ☐			
Are you or were you an employee of the owner? Yes ☐ No ☐			
Complete if your unit is in a co-op or condo: (write name and address of each listed below)			
Unit Owner/Proprietary Lessee: _____			
To Whom do you pay Rent: _____			
Managing Agent for Rental Units: _____			
Managing Agent for Co-op/Condo Units: _____			
President or Chairman of Co-op/Condo: _____			
Filing Instructions: Complete an original and two copies of this complaint and include a copy of any attachments to each copy. File the original, two copies and any accompanying documents at the address indicated above by personal delivery or mail. Failure to follow this procedure or include all required information may result in the rejection of this application.			
Part II - Definition of Harassment			
It shall be unlawful for any owner or any person acting on his or her behalf, directly, or indirectly, to engage in any course of conduct (including, but not limited to, interruption or discontinuance of required services, or unwarranted or baseless court proceedings) which interferes with, or disturbs, or is intended to interfere with or disturb the privacy, comfort, peace, repose or quiet enjoyment of the tenant in his or her use or occupancy of the housing accommodations, or is intended to cause the tenant to vacate such housing accommodation or waive any right afforded under the Rent Regulatory Laws.			
There must be a willful interruption in services or a continuing course of conduct, as distinguished from an isolated incident.			
Persons using this form may be summoned to testify under oath in court or before this agency in connection with criminal or civil action initiated on the basis of the statements contained herein. Painting complaints, other service complaints, and complaints of violations such as overcharges, bonus payments, furniture tie-in sales, security deposits, lease renewals, etc., should not be filed on this form, but on other appropriate forms which may be obtained at your local Borough or District Rent Office.			
Penalties for Proven Violations: Owners found guilty of harassment are subject to fines imposed by the Commissioner of not less than \$1,000 nor more than \$5,000 for each offense. The Division of Housing and Community Renewal (DHCR) will permit no future rent increases once there has been a finding of harassment, until such finding is lifted by DHCR order. In addition, DHCR may refer harassment violations to the District Attorney. Harassment of a rent regulated tenant which causes physical injury is a Class E Felony, punishable by imprisonment and fine.			
Part III - General Information			
1. Date you took occupancy: _____		Current rent charged: _____ (mo.) (wk.)	
Date current owner of building became the owner: _____			
2. Do you have a current lease? Yes ☐ No ☐ If yes, state the term of current lease: From ____/____/____ To ____/____/____			
3a. Is rent being paid? Yes ☐ No ☐ Amount paid \$ _____, Amount demanded \$ _____			
b. Is rent being accepted? Yes ☐ No ☐ Are receipts being given? Yes ☐ No ☐ Has landlord refused to renew your lease? Yes ☐ No ☐			
4a. Give total number of apartments (units) in building: _____ Occupied: _____ Vacant: _____			
b. If there are vacant apartments (units) in the building, indicate whether they are left open, locked, boarded up or being altered: (Circle appropriate items)			
5. Have you been notified that the building is scheduled for demolition or alteration? Yes ☐ No ☐			
6. Has any alteration or construction work taken place at the building in the last six months? Yes ☐ No ☐			
7a. Is a "work permit" from the Department of Buildings on display? Yes ☐ No ☐			
b. Has the owner filed for Certificates of Eviction or for permission not to renew your lease? Yes ☐ No ☐			
If yes, indicate Docket Nos. _____			

RA-60H (8/00) INTERNET -1-

8. Is there a tenant's committee in your building? Yes ☐ No ☐ If yes, indicate name, address and telephone number of the Chairman of the Committee: _____
9. My apartment is regulated under ☐ Rent Stabilization; ☐ ETPA; ☐ Rent Control; ☐ Hotel Stabilization (includes Single Room Occupancy (SRO) tenants.)
10. Do you authorize DHCR to communicate with your attorney/representative concerning this complaint?
☐ Yes ☐ No If yes, indicate name, address and telephone number: _____

Part IV - Nature of Harassment

If you need more space for details use Part V

- 11a. ☐ I was offered \$ _____ by _____ (name) to vacate my apartment by _____ (date) 19 ____.
- b. ☐ I was threatened with eviction if I refused to vacate my apartment. c. ☐ I was told that essential services would not be provided.
- d. ☐ I was offered another apartment. e. ☐ After I refused the offer, the services were decreased. f. ☐ After I refused the offer, I have received threats of eviction from _____ (name) (Give details in Part V).
12. ☐ The owner has brought court action against me: Yes ☐ No ☐ If yes, complete a, b, c & d below.
- a. ☐ Kind of court action: _____; Date of court action: _____
- b. ☐ Index No. _____ (If more than one court action, list in Part V)
- c. ☐ I have retained a lawyer. Give name, address and telephone no.: _____
- d. ☐ The claim against me is unfounded for the reasons stated in Part V. **Also give status of legal proceeding.** (In any subsequent conference please bring copies of any court papers)
- 13a. ☐ I filed the following applications with the Office of Rent Administration or other Agency.
- | Docket No. & Nature of Complaint | Date | Disposition |
|----------------------------------|-------|-------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
- b. ☐ I have also filed complaints with _____
- | Name of Agency | Date | File No. | Disposition |
|----------------|-------|----------|-------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
14. ☐ I have been illegally evicted, "locked-out" or otherwise excluded from my apartment.
15. ☐ I have taken legal action against the owner: Yes ☐ No ☐ If yes, indicate: _____
16. ☐ The owner has intentionally decreased, withheld or interrupted the following services: ☐ security; ☐ heat; ☐ hot water; ☐ cold water; ☐ electricity; ☐ superintendent or janitor; ☐ garbage removal; ☐ elevator; ☐ other

Part V - Further Statement of Tenant

(Otras Declaraciones Del Inquilino)

(State in this space additional facts which may assist Office of Rent Administration in processing your complaint)

All statements and attachments must be in English.

(Todos las declaraciones y anexos deben estar escritas en inglés.)

I have read the foregoing and I hereby affirm under the penalties provided by law that the contents thereof are true of my own knowledge.
 Declaro conforme a la ley que he leído lo antecedente cuyo contenido es verdad.

It is not necessary that the foregoing be notarized, but false statements may subject you to the penalties provided by law.

No es necesario que el documento sea bajo juramento: sin embargo, declaraciones erróneas pueden resultar en un delito de acuerdo con la ley.

 Signature of Tenant - Firma del Inquilino

 Dated: (Fecha)

This Form and Any and All Attachments Must Be Filed in Triplicate

Esta Planilla Debe De Hacerse Por Triplicado

b. How DHCR Resolves Harassment Complaints

The DHCR's Enforcement Unit handles harassment cases against landlords. Staffed with attorneys who specialize in harassment claims, the Unit responds to all tenant complaints.

The DHCR will review the complaint and if it is found to have merit, an informal conference between you (and any other complaining tenants), the landlord and a DHCR mediating attorney is set. Most complaints are resolved at this level. In some cases, the landlord will voluntarily agree to stop making eviction threats, for instance, or to provide services.

But if the dispute cannot be settled and there is evidence that the landlord has violated the anti-harassment provisions of the rent laws, DHCR will proceed with a formal hearing against the landlord before an administrative law judge who will issue a decision and order based on the evidence presented by the tenant and landlord. If, after the hearing, the DHCR finds that the landlord engaged in harassment, the landlord will be fined (up to \$5,000 for each violation). The fine is payable to the state agency, not to the tenants. In addition, the DHCR may suspend the landlord's right to collect rent increases until such time as the DHCR issues an order finding that the harassment has ceased.

Both tenants and landlords may appeal a finding of harassment, by filing a petition for administrative review with the agency. The DHCR's final decisions are subject to review by the New York State Supreme Court.

For more information, read DHCR Fact Sheet #17, "Harassment." You may call to order one from the DHCR InfoLine (718-739-6400) or download it from the agency's website (www.dhcr.state.ny.us).

2. NYC Tenants May File Harassment Complaint With Police or City Lawyer

New York City's "Unlawful Evictions Law" protects tenants from harassment and illegal lockouts. (NYC Admin. Code § 26-521 and following.) This law applies to all regulated and non-regulated tenants as well as to non-tenant occupants, such as subtenants, roommates and relatives, who have occupied a New York City apartment for 30 consecutive days or longer. The Unlawful Evictions Law prohibits any person, including the landlord, manager, super or other member of the building staff, from:

- engaging in a course of conduct that interferes with the comfort, peace or quiet of the tenant or occupant and that is designed to force the tenant or occupant to vacate the apartment, including the interruption or discontinuance of essential services
- using or threatening force to induce a tenant or occupant to vacate an apartment
- engaging or threatening to engage in any conduct to prevent the tenant or occupant from lawful occupancy of the apartment, including removing the tenant's possessions, removing the entrance door to the apartment or changing, plugging or removing the door lock.

A violation of the Unlawful Evictions Law is a Class A misdemeanor, punishable by up to one year's imprisonment. Penalties of between \$1,000 and \$10,000 per violation may also be assessed against the wrongdoer.

Tenants and occupants who have been harassed or illegally locked out may file a complaint with the New York City Police Department, which will investigate and, if necessary, arrest or issue a criminal summons against the person. The New York City Corporation Counsel, the attorney for the city's Law Department, may institute actions or legal proceedings for civil penalties and injunctive relief (to stop current and future harassment). Some tenant advocates have complained that this office does not zealously enforce the Unlawful Evictions Law. Nevertheless, you may initiate a complaint to the Corporation Counsel by calling or writing: Office of the New York City Corporation Counsel, New York City Law Department, 100 Church Street, New York, NY. 10007, 212-788-0303.

If you have been illegally locked out and the police cannot put you back into possession of your apartment, you may bring a so-called "illegal lock-out" proceeding in the New York City Civil Court's landlord-tenant part ("Housing Court") for your borough. To do so, go to the landlord-tenant clerk's office and explain that you are the victim of an illegal lockout. The clerk will give you two forms to complete: an "Order to Show Cause" and a blank supporting affidavit, on which you will insert information about your landlord, your apartment, your tenancy and the facts surrounding the lockout. The Order to Show Cause will ask the Court to issue an order "staying" the landlord from re-renting the

apartment to someone else. It also asks the court to schedule a hearing to “restore” you to legal possession of the apartment. Once your forms are reviewed and signed by a judge, you’ll get a date to return to court for a hearing. (You will also need to mail or deliver a copy of the order to the landlord.) At the hearing, the landlord will need to explain why you were locked out of your apartment. If the landlord had no legal justification, you must be permitted to move back into your apartment and you are entitled to money damages for the illegal eviction.



If you are eligible for Legal Services or Legal Aid, a public lawyer can prepare the necessary papers on your behalf and represent you at a hearing. Otherwise, you may want to talk to an experienced landlord-tenant lawyer about bringing the case for you, since you may be entitled to money damages and attorney fees.

3. NYC Tenants in Former Manufacturing and Warehouse Space May File Harassment Suit

In response to harassment of urban artists, artisans and other persons residing in rented space converted from previous manufacturing uses, the state legislature enacted Section 235-d of the Real Property Law in 1978. This law prohibits landlords in New York City (and any person acting of their behalf) from engaging in a course of conduct that interferes with or disturbs the tenant’s “comfort, repose, peace or quiet,” if such conduct is intended to cause the tenant to move out or to give up any right under the lease or other rental agreement.

To seek relief under the Real Property Law’s harassment provision, you must file a lawsuit in the State Supreme Court, asking the court to stop the harassment. The law authorizes the court to issue a temporary or permanent restraining order against the landlord, and to award money damages. Chapter 19 contains information on finding legal assistance to file a lawsuit.

4. Tenants Statewide May File a Criminal Complaint

Some landlord harassment is so egregious that it crosses the line into criminal misconduct. File a criminal complaint with the police if your landlord

has physically injured you or a member of your family, either intentionally or recklessly. You may also file a criminal complaint against a landlord who attempts to injure you or puts you in reasonable fear of being injured.

Interestingly, the punishment depends on the rent-regulatory status of the tenant who was harassed. A landlord (or anyone acting on the landlord’s behalf) who physically injures a rent-stabilized or rent-controlled tenant with the intent to cause the tenant to vacate her apartment is guilty of “harassment of a rent-regulated tenant,” a Class E felony since 1997. (NY Penal L. Art. 241.) Class E felonies are punishable by imprisonment for a term of one to four years. Landlords who injure non-regulated tenants, however, are guilty of a “third-degree “assault,” a Class “A” misdemeanor which carries a prison sentence of less than one year. (NY Penal L. Art. 120.) Attempted assaults, menacing and stalking are also considered misdemeanors and carry a maximum sentence of less than one year.

Your Right to Organize

Tenants have a legal right to organize with other tenants in the same property or community. You may form, join and participate in tenants’ organizations for the purpose of protecting your rights. Landlords may not harass or penalize tenants who exercise this right. Tenants’ rights groups have the right to meet in any common area in their building, such as lobbies and halls, in a peaceful manner, at reasonable hours without obstructing access to the premises or facilities. (RPL § 230.)

D. How to Stop a Retaliatory Eviction

The threat of eviction is a powerful weapon. Unfortunately, some landlords misuse it to intimidate tenants from making legitimate housing complaints to government agencies and authorities, filing legal proceedings or lawsuits to enforce tenant rights or organizing tenant associations. To keep landlords from threatening termination or using eviction proceedings to get even with tenants, the state legislature

enacted New York Real Property Law § 223-b. It prohibits landlords from serving a termination notice or starting an eviction proceeding in retaliation for your having asserted your rights as a tenant. In this section, we'll explain how the statute works and under what circumstances you may use it.

1. What the Retaliatory Eviction Statute Says

The statute prohibits landlords from serving a termination notice upon any tenant, or commencing any legal action or proceeding to recover possession of a rental unit in retaliation for a tenant's:

- good faith complaint to a governmental authority about a violation of any housing-related law, regulation code or ordinance, such as a no-heat complaint to a housing code enforcement agency or a rent-overcharge complaint to the DHCR (discussed in Chapter 4). To be in “good faith,” your complaint to a government agency must be legitimate. For example, a “good faith” complaint to a housing code enforcement office concerns conditions that actually exist in the premises and that adversely affect or threaten your health, safety or habitability. It doesn't matter if the condition you complained about turns out not to violate a specific housing code provision. Groundless and repetitive complaints are not protected.
- legal action to enforce any rights granted under the lease, the warranty of habitability or any other housing law, or
- participation in the activities of a tenant's organization in the building or community that has been formed to protect the rights of tenants.

If a landlord terminates a tenant to get even with a tenant for making a complaint, bringing a legal action or participating in a tenant's organization (as explained above), and then starts an eviction proceeding, the tenant may raise “retaliatory eviction” as a defense in her answer to the landlord's eviction petition and seek damages for its violation against the landlord. (Chapter 16, Section I, describes how to answer a holdover eviction petition.) If the tenant proves retaliation (see Section 2, below), the eviction case will be dismissed and the tenant may be entitled to money damages resulting from the landlord's spurious eviction lawsuit.

2. How to Prove Retaliation

Going to court and convincing a judge that your landlord's motive is retaliatory can be tough. Fortunately, the statute that protects tenants from landlord retaliation provides certain legal “presumptions” to help a tenant prove that his landlord's motive is retaliatory and defeat eviction. Here's how. Under the statute, a landlord's action to terminate your tenancy or evict you is *legally presumed* to be retaliatory if your landlord served a termination notice or began a holdover proceeding within six months after you took any of the following types of action:

- you complained to a government agency or authority about an alleged violation of any housing-related law, regulation, code or ordinance
- you began a lawsuit or administrative proceeding against your landlord to enforce your rights under your rental agreement, under the warranty of habitability or other housing laws or regulations, or
- you secured an inspection, order or other action in response to your complaint or you won a judgment against the landlord in a lawsuit or administrative proceeding.

The effect of the legal presumption built into the anti-retaliation statute is that, without proving anything else, you will win unless the landlord steps forward with evidence that will knock down the presumption. If the landlord can convince the judge that you violated a substantial lease obligation, created a nuisance or used the rental unit for an illegal purpose, the landlord may get beyond the presumption. If a court decides that the landlord's real motive is retaliation, and further concludes that the landlord wouldn't otherwise have terminated the tenancy or began an eviction proceeding against you, the judge will dismiss the eviction proceeding and may impose civil damages against the landlord. (RPL § 223-b (3); see also *Mayfair York LLC v. Zimmerman*, 702 N.Y.S.2d 494 (Civ.Ct., N.Y. County, 1999).)



Not all tenants are entitled to the legal presumptions created by statute. The statute applies to all rental units except owner-occupied dwellings with less than four units. (RPL § 223-b.) Tenants in these smaller buildings must produce evidence of the landlord's retaliatory motive.

3. How to Seek Protection Under the Statute

If your landlord has commenced an action or proceeding to remove, eject or evict you from your rental unit to get even with you for filing a good faith complaint or to intimidate you, you may raise “retaliatory eviction” as an affirmative defense to the

action or proceeding. You may also make a “counterclaim” against the landlord for money damages for retaliatory eviction. Chapter 16 defines these terms and explains the procedure to include this defense and counterclaim in your answer to the landlord’s petition. ■



Enforcing Your Right to Sublet Your Apartment

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Ideally, you'll want to nest in your apartment for a long time. But sometimes, life throws you a curve ball and you'll need to leave town—say, to care for an ailing relative temporarily or to pursue a short-term, job-related opportunity. While you're gone, it may be wise to temporarily sublet your apartment to someone else.

Fortunately, New York law gives eligible tenants a right to sublet, even where their leases prohibit subletting. Here we review special subletting rules for rent-stabilized tenants and explain when a landlord must let you sublet and when he can refuse. We also supply a model letter that meets the legal requirements tenants must follow when seeking the landlord's consent to sublet, and a sample sublease agreement form you can adapt for your own use.



Related topics covered in this book include:

- Rental agreement and lease clauses on occupancy restrictions, subletting and assignment: Chapter 2
- Sharing your apartment with co-tenants, immediate family members and roommates: Chapter 7
- Fair housing laws: Chapter 11
- Rules and procedures for terminating tenants for subletting or assigning without the landlord's consent: Chapter 16
- Which family members are protected from eviction under succession laws when a rent-controlled or rent-stabilized tenant dies or moves out: Chapter 16
- Getting released from a lease or assigning a lease: Chapter 17.



Model Letters and Sample Forms in This Chapter

- Letter Seeking Permission to Sublet
- Sublease Agreement

A. Subletting Basics

A sublet is a rental arrangement in which you agree to rent all or a part of your unit for a specific time period to another person, called a subtenant. Under this arrangement, you keep the right to return and reoccupy the rental unit (or that portion that you've rented out) when the arrangement ends.

Usually, you sign an agreement with the subtenant called a sublease, covering terms such as rent, utilities, maintenance responsibilities and the like. (See the Model Sublease in Section F, below.) The subtenant is bound both by the terms of the sublease and by the terms of your lease with the landlord, which gets a new name—the “overlease.” You also get a new name—the “overtenant.”

Your landlord has no direct legal relationship with your subtenant. So if a subtenant violates the overlease—say, by keeping a pet in violation of a no-pet clause or failing to pay rent—your landlord must act against you. To avoid termination of your tenancy, you must then take action against the subtenant. If you don't act and the lease violation continues, the landlord can terminate the overlease, which in turn terminates the sublease. If you don't move out, the landlord can then sue to evict you and your subtenant.

This works both ways. If the dishwasher in the apartment breaks down, for instance, your subtenant must complain to you—not the landlord. It's your responsibility to get the landlord to fix the appliance. Your landlord isn't required to respond to your subtenant's maintenance requests because the landlord doesn't have a legal relationship with the subtenant—you do.

1. Can Your Landlord Prohibit You From Subletting?

Can your landlord just say “no” to your request to sublet? It depends. In some cases, your landlord can prohibit subletting. Month-to-month rental agreements may ban subletting, as may leases for single-family houses, duplexes and small buildings with fewer than four units.

But there are three situations when your landlord must consent to your request to sublet:

- When you have no lease or rental agreement, or have a lease or rental agreement (oral or written) that is silent on the issue of subletting, you have a right to sublet without the landlord's prior consent.
- When your lease or rental agreement permits subletting and any applicable qualifications, such as getting the landlord's consent, have been met.
- When your lease prohibits subletting, but you are nevertheless entitled to sublet under New York's “Sublet Law” (RPL § 226-b), as explained below.

2. Who Is Covered by the New York Sublet Law?

The Sublet Law covers all New York tenants who:

- have a current lease (oral or written) for the unit, and
- live in a building with four or more residential units.

It gives eligible tenants the right to sublet—even if the lease prohibits it. But there are strings attached:

1) you must obtain your landlord's consent to sublet, and 2) your landlord can't withhold consent without a very good reason.

The Sublet Law protects rent-stabilized tenants throughout the state, because they have current leases. However, special restrictions apply. (See Section D, below, for a rundown on two important limitations on a rent-stabilized tenant's right to sublet.)

The following groups of tenants are *not* covered by the Sublet Law:

- **Tenants with leases in properties with three or fewer units.** Your lease governs your right to sublet. If the lease is silent on the issue of subletting, you are presumed to have the right to sublet the apartment.
- **Tenants with periodic rental agreements, such as month-to-month tenants.** Your right to sublet is governed by your written rental agreement, if you have one. Such agreements rarely confer sublet rights.
- **Rent-controlled tenants, unless they have a current lease.** Leases for most rent-controlled tenants expired long ago. Landlords don't need a valid reason to refuse a sublet request from a rent-controlled tenant without a current lease.

The following section describes the manner in which eligible tenants must request permission to sublet.



Don't discriminate illegally. As a sublessor, you must abide by federal, state and local fair housing laws (discussed in Chapter 11). Be especially careful in the way you advertise for and screen prospective subtenants. A note tacked to a health club bulletin board advertising "Studio to rent, single Jewish woman preferred," would violate federal, state and New York City anti-discrimination laws. As would rejecting a prospect on the basis of their religion, or some other protected characteristic (See Chapter 11, Section A).

B. What Your Sublet Request Must Cover

Even if you are eligible to sublet under the Sublet Law, you must first ask your landlord's permission. The Sublet Law requires tenants to follow a set procedure when making a request to sublet and to furnish the landlord with particular information about the proposed sublet. If you don't make the sublet request the right way, your landlord can reject it. That's why it's essential for you to know exactly how your sublet request must be made. Our Model Letter Seeking Permission to Sublet, shown below, fulfills these statutory requirements.

1. What Sublet Request Must Say

Your request *must* include the following information about the proposed sublet:

- length of the proposed sublease
- name of the proposed subtenant or subtenants
- business and home addresses of proposed subtenant
- your reason for subletting
- your address during the sublease term
- written consent from any co-tenant or guarantor of the lease, and
- a copy of your lease, attached to a copy of the proposed sublease, acknowledged by both you and the subtenant as being a true copy of the sublease. (RPL § 226-b (2)(b).)

This is the minimum amount of information you are required by law to submit to the landlord. You are free to supply any additional information you like, such as the subtenant's phone numbers or reference letters for the proposed subtenants. You may use the Letter Seeking Permission to Sublet included here as a model to make your own sublet request. Simply fill in the information that pertains to your situation and add any other information you think may be relevant.

2. How and When Sublet Request Should Be Made

To be valid, your sublet request must be in writing and be sent to the landlord by certified mail, return receipt requested. Using a different mail or delivery method could invalidate your request.

Your request must be made at least 30 days prior to the proposed sublet. As a practical matter, you should mail your request as early as possible.

Model Letter Seeking Permission to Sublet**CERTIFIED MAIL; RETURN RECEIPT REQUESTED**

Date: November 10, 200x

To: Paul Wiggins
East 51st Street Associates
450 East 51st Street
New York, NY 10021

From: John L. Hiatt

Re: Apartment 15-B, 450 East 51st St., New York, NY 10021

Dear Paul,

This is a formal request to sublet my apartment, pursuant to the New York Sublet Law (Real Property Law Section 226-b). Here are the details:

Reason for sublet and length of proposed sublease: I will be in London on a ten-month research assignment for my employer beginning January 1, 200x. During the ten-month period of January 1 to November 1, 200x, I wish to sublet my apartment. When the sublease ends, I intend to reoccupy my apartment.

Name of the proposed subtenant: Laura P. Flynn

Business address and phone number of proposed subtenant:

Business: Law Offices of Laura P. Flynn
225 Broadway, 8th Floor
New York, NY 10007
212-619-3131

Home address and phone number of proposed subtenant:

520 East 72th St., Apt. 13N
New York, NY 10021
212-766-3737

My address and phone number during the sublease term:

25 Gloucester Street
London, England SW1 0QP
Phone: 0171-606-4999

Attached is a copy of my current lease for the apartment along with a copy of the proposed sublease, acknowledged by both the subtenant and me as being a true copy of the sublease. I look forward to your prompt response to my request.

Sincerely,

John L. Hiatt

John L. Hiatt, Tenant

C. How and When Your Landlord May Respond to Your Sublet Request

The amount of time your landlord has to respond to your sublet request depends on his proposed response and whether he needs additional information to make a decision. After reviewing the sublet request, your landlord may take any of the following three steps:

Accept or reject the sublet within 30 days. If your sublet request contains all the information needed to make an informed decision about the sublet, the landlord must send you a notice either accepting or rejecting the sublet request within 30 days of the date you mailed the request to the landlord.

Reject sublet request as defective within ten days. Because the sublet rules are complicated, it's easy for tenants to make mistakes. Technically, your landlord can reject a sublet request if it omits required information (outlined in Section B, above).

Ask for more information about the sublet within ten days. If your landlord needs more information, he must send you a request within ten days of getting your written request to sublet. Once you send the landlord the requested information, the landlord has 30 days from the date you send the additional information to consent or reject the sublet.

It's critical for landlords to follow the time deadlines when responding to a tenant's sublet request. If your landlord misses the ten-day deadline to request more information, he must make a decision based on the information that you sent. If your landlord misses the 30-day deadline to reject, it's as if he consented, and you may go ahead with the sublet.

When a landlord gets your sublet request, she's entitled to evaluate the proposed subtenant by exactly the same standards she used to select you, such as financial stability, credit history and references from employers and prior landlords. The Sublet Law lets landlords demand additional information about the proposed subtenant's finances, rental history and the terms of the sublease.

To request additional information, the landlord must send you a written list of questions about the sublet within ten days after the sublet request was made. Regular mail is okay. The landlord needn't send it by certified mail.

The landlord may ask specific questions about the proposed subtenant's finances and rental history, or

may include a rental application form for the proposed subtenant to complete and sign. In addition to the rental application, the landlord may include a list of questions for you to answer, such as whether you will be leasing or buying the home in which you will live during the proposed sublease period.

The Sublet Law specifically prohibits landlords from making "unduly burdensome" requests for additional information about the sublet. That means that the landlord may not ask repetitive or irrelevant questions, or require you to fill out a 20-page questionnaire. Tactics like these, which are intended to discourage you from subletting, are illegal.



If the rental unit is rent-stabilized, expect extra questions about your primary residence, and your intent to return to the unit to use it as a primary residence at the end of the sublease term. Section D1, below, alerts you to the types of questions rent-stabilized tenants can expect to be asked.

D. Special Rules for Rent-Stabilized Tenants

Tenants of rent-stabilized units within and outside of New York City need to know about two special sublet rules, discussed below, which limit their right to sublet.

1. Primary Residence Rule

In order to sublet, a rent-stabilized tenant must:

- use the rental unit as a primary residence when the request is made, and
- intend to return to the unit and occupy it as a primary residence at the end of the sublease term. (9 NYCRR § 2505.7(a); 9 NYCRR § 2626.6(a).)

A tenant's "primary residence" is generally considered to be the place where the tenant actually spends the night more often than not. The "primary residence" is described in legal jargon as the place where the tenant has an "ongoing and physical nexus." State law requires rent-regulated tenants to use their apartments as a primary residence; this rule is explained in Chapter 7, Section B4.

When a rent-stabilized tenant requests permission to sublet, many landlords will search the application

for reasonable grounds to say no. Not because they're sore sports, but because landlords prefer to release rent-stabilized tenants from their leases. A release creates a vacancy, which entitles landlords to big rent increases that aren't available when a tenant sublets. So, expect the landlord to pepper you with questions about your primary residence and your stated intention to return to the apartment at the end of the proposed sublet term.

Here are some questions your landlord is likely to ask:

- Are there any other dwellings you own or lease?
- Will you be removing all or most of the furnishings from your apartment before the sublease begins?
- Is the primary dwelling at the address where you will reside during the period of the sublease a co-op, condominium, private home or rental?
- Who owns or leases the apartment or home you will occupy during the sublet period?
- Where do you intend to live at the end of the sublease?
- Have you sublet the subject apartment during the last four-year period? If so, supply the dates that the subletting occurred, the rent charged and the name of the subtenant. (While your landlord should already know the answer to this question, it is intended to trick you into revealing a prior illegal sublet which could form the basis to reject this one.)
- Does the subtenant have the option to renew the sublease for an additional term? If yes, state the term of the subtenant's renewal option. (When answering a question like this, bear in mind that a rent-stabilized tenant can't sublet for more than two years out of the four-year period preceding the termination date of the proposed sublease. (9 NYCRR § 2505.7(c); 9 NYCRR § 2525.6(c).) We explain this rule in Section 2, below.

When faced with questions like these, your best bet is to methodically answer them—even though it may seem like harassment. Courts have permitted landlords to ask such questions in connection with sublet requests from rent-stabilized tenants, notwithstanding the requirement that such questions and request for additional information should not be unduly burdensome.

Within 30 days after you request permission to sublet, or submit additional information as requested, your landlord must tell you whether he is consenting to or rejecting the proposed sublet. A landlord's failure to respond to the tenant within 30 days constitutes consent to the sublet. (RPL § 226-b (2)(c).)



Don't depend on a landlord's oral representation.

If your landlord tells you in person or on the phone that your sublet request has been approved, politely ask to have that information in writing. If the landlord won't supply it himself, send him a letter reciting the substance of the conversation and the landlord's consent (if he doesn't write back to dispute your version, legally he'll have a hard time objecting to it later). If he sells the building during the term of your sublet, the next landlord could try to evict you for illegally subletting.

A landlord may reject a rent-stabilized tenant's sublet request if she has good reason to believe that the tenant does not use the rental unit as a primary residence, or does not intend to use the rental unit as a primary residence at the end of the sublease term.

Here are two examples that illustrate this point.

EXAMPLE 1: Peter and Mae rent a rent-stabilized unit on the Upper West Side. After their baby arrives, they realize that their one-bedroom apartment is too small. The family buys a spacious three-bedroom co-op apartment on the East Side. Peter and Mae move all of their belongings out of their one-bedroom unit and then request permission to sublet it. Their landlord may reasonably refuse to consent to the sublet. Peter and Mae's primary residence is their new, East Side apartment. They have no real intention of squeezing back into their one-bedroom unit at the end of the sublease.

EXAMPLE 2: Emma, an investment banker, lives in a rent-stabilized apartment in Brooklyn Heights. Emma gets transferred to Tokyo for a 14-month job assignment. She fully intends to move back into her apartment when she returns from Japan and use it as her primary residence. Emma is delighted to find a suitable subtenant who is willing to sublet it for the 14-month period that Emma will be in Tokyo. If Emma's

subtenant meets the landlord's screening criteria, Emma's landlord may not reasonably refuse to consent to Emma's request to sublet her rental unit while in Tokyo.

2. You Can't Piggyback Your Subleases

The Sublet Law prohibits you from continuously subletting your apartment, because it requires that you occupy the unit for at least two years between sublets. The rule is that a rent-stabilized tenant can't sublet for more than two years, including the term of the proposed sublet, out of the four-year period preceding the termination date of the proposed sublease. (9 NYCRR § 2505.7(c); 9 NYCRR § 2525.6(c).) The term of the sublease may, however, extend beyond your lease term. That's because, as a rent-stabilized tenant, you have a "vested" right to a renewal lease. A sublet does not affect that right.

EXAMPLE: Ravi asks his landlord for permission to sublet his rent-stabilized apartment for two years starting January 1, 2003. Ravi's lease expires on December 31, 2003. The two-year sublet would expire December 31, 2004. Unless Ravi has already sublet the apartment for any period of time between January 1, 2000, and December 31, 2002, his landlord may not refuse to consent to Ravi's request on the ground that the proposed sublet exceeds the limit.

3. NYC Landlords May Collect Sublet Surcharge During Sublet Term

If you get permission to sublet during the term of a renewal lease (as opposed to your first rent-stabilized lease), your landlord may collect a sublet surcharge—but only if your rent-stabilized unit is in New York City. The amount of the surcharge is set by the NYC Rent Guidelines Board "vacancy allowance" in effect on the date the sublease begins. The surcharge may remain in effect only as long as the sublease lasts. The landlord must discontinue collecting the surcharge at the end of the sublease. (9 NYCRR § 2525.6(e).) For more information about Rent Guidelines Board vacancy allowances, see Chapter 4, Section F.

E. Reasonable Grounds for Rejecting a Sublet

The Sublet Law says that a landlord can't unreasonably withhold consent to an eligible tenant's sublet request. There must be reasonable grounds for refusal, such as valid concerns about the subtenant's financial stability, credit history, rental history or personal references. The grounds must be legitimate and non-discriminatory. If you are rent-stabilized, your landlord could also reasonably reject the sublet request on the basis of prior sublets or primary residence. See Section D, above, for details.

If consent is withheld, your landlord must state the reason or reasons for rejecting the request. Courts have consistently ruled that a landlord's failure to state a reason for the refusal of a sublet request is, in essence, consent to the sublet. (See, for example, *Conrad v. Third Sutton Realty Co.*, 81 A.D.2d 50, 439 N.Y.S.2d 376 (1st Dep't 1981).)

If you believe that the landlord's rejection of the sublet is unreasonable, you have two options:

- You can go to State Supreme Court and file a lawsuit asking the court to find that the landlord's refusal to consent to the sublet was unreasonable. This is known as filing a "declaratory judgment action"—a fairly sophisticated legal action that requires a lawyer's help (but if you win, you could be entitled to attorney's fees as discussed in Chapter 2, Section B). That puts the burden on the landlord to prove to the court that her reasons for rejecting were legitimate and well founded. If you lose, you can't sublet, but your tenancy will remain intact. (Losing could also expose you to liability for the landlord's legal fees.)
- The other option is to go ahead with the sublet. If the landlord brings a holdover eviction proceeding against you for illegally subletting, you can challenge the landlord's rejection as unreasonable before that court. However, if you lose, you also stand to lose your tenancy. If your lease contains an attorney fees provision, the loser may be legally responsible for the prevailing party's legal fees as discussed in Chapter 2, Section B.

F. How to Prepare a Sublease Agreement

Oral rental agreements are perfectly legal for month-to-month subtenancies and for subleases of a year or less. (GOL § 5-703(2).) While oral agreements are easy and informal, it is never wise to use one, as explained in Chapter 2, Section A. So we recommend using a clear written sublease agreement, signed by you and the subtenant, which will specify rent, duration of the tenancy, a security deposit and so on. We include a sample sublease agreement here between you (the overtenant) and the subtenant. You can modify it or add extra clauses to meet your own needs.



Subleasing your rental unit transforms you into your subtenant's landlord. As an overtenant, you have the same repair and maintenance responsibilities to your subtenant as your landlord has to you. (These are described in Chapter 9.) As landlord, you'll also be required to follow the laws on charging rent (Chapter 3), handling your tenant's security deposit (Chapter 5), and steering clear of illegal discrimination, retaliation and harassment charges (Chapter 11). And if your tenant fails to pay rent or commits some other serious violation of the sublease agreement, you'll need to take legal action to remove the subtenant. (Chapters 15 and 16 describe the necessary steps, albeit from the tenant's perspective.) For details on the landlord's perspective, see *The New York Landlord's Law Book*, by Mary Ann Hallenborg (Nolo).

1. Typical Terms in Sublease Agreements

Your Sublease Agreement should set a definite date for the beginning and expiration of the sublease and provide details on the amount of rent and when, where and how it's paid, including any late fee or returned check charges. For non-regulated units, you can legally charge as much rent as you want—or more—practically speaking, as much as a subtenant will pay.



If the apartment is rent-stabilized, there's a cap on how much rent you may charge a subtenant.

Rent-stabilized tenants who sublet their apartments unfurnished may not charge more than the legal regulated rent paid to the landlord. If the apartment is "fully furnished," rent regulations permit you to collect an

extra 10% surcharge over the legal regulated rent. If you overcharge the subtenant, you can be liable for rent gouging and be subject to a triple damage penalty. (9 NYCRR § 2625.6(b).)

The sample Sublease Agreement here includes a few clauses that are specific to sublease agreements, explained in the sections below.

a. Sublease Subject to Terms and Conditions of the Overlease

Clause 10 of the sample sublease agreement makes it clear that all of the conditions and obligations of your lease (now the overlease) continue during the term of the sublet. By making the overlease a part of the sublease, this clause binds your subtenant to the tenant promises you made in your lease with the landlord, such as using the rental unit for living purposes only. This clause gives you the authority to evict a subtenant who persists in seriously violating a term of the overlease, which puts your tenancy in jeopardy.

EXAMPLE: Duane sublets his Brooklyn apartment to Sam while Duane spends the year at his firm's San Francisco office. After moving in, Sam gets a parrot—a violation of the no-pet clause in the overlease. Sam's neighbors complain to the landlord about the squawking parrot, prompting the landlord to send a notice to cure to Duane, warning him to remove the parrot in ten days or face termination of his tenancy. Because the sublease is subject to the terms and conditions of the overlease, Duane sends Sam a five-day notice to cure, warning him to remove the bird or face termination. Sam quickly finds a new home for the parrot and the subtenancy continues without termination by the landlord.

To complete Clause 10, insert the date of the overlease, and the name of the landlord and tenant as it appears on the lease. Then list the clauses in the overlease that will not apply to the subtenant. At minimum, you should list the clauses that pertain to payment of rent and posting a security deposit, since you want the rent and security clauses of the sublease to control. Also add any other clauses of the overlease that you do not want to apply to the sublease, such as an obligation to pay attorney's fees and court costs.



It's essential to attach a copy of your current lease with the landlord to each copy of the sublease, so that the lease legally becomes a part of the sublease.

b. Landlord's Consent to Sublease

Applying to the landlord for permission to sublet can present a classic Catch 22 situation for tenants. The Sublet Law requires tenants to forward a signed copy of the sublease agreement to the landlord when they request consent to sublet. Yet, signing a sublease before you get landlord approval to sublet can put you on the hook for more than you can deliver. After all, the landlord could reasonably refuse to permit the sublet to go forward.

Clause 11 of the sample sublease agreement solves this problem by making the validity of the sublease contingent upon the landlord's timely consent to the sublet. If the landlord fails to consent to the subletting within an agreed-upon time period, the sublease is deemed void, or cancelled. Both you and your proposed subtenant are released from the obligations of the sublease, and you must refund any money advanced for a security deposit or for the first month's rent to the subtenant. If you're not sure whether you're legally required to obtain consent from the landlord, read Section B of this chapter, above, to find out. Most tenants are required to obtain prior consent. Only those tenants whose leases give them an absolute and unfettered right to sublet are not required to obtain landlord consent.

If landlord consent is required, Clause 11 requires you to specify an agreed time period within which it must be obtained. Keep in mind that after you make a request to sublet, the Sublet Law gives the landlord ten days to ask you for additional information, and another 30 days after you submit the requested additional information, to accept or reject the sublet. Since you'll need time to put together any requested additional information and mail it back to the landlord, the entire process could easily take as long as 50 days. If possible, agree to a time period of at least 60 days. Hopefully, you'll receive a decision from your landlord in far less time.

c. Additional Provisions

List any additional provisions in Clause 16—for example, if your overlease does not prohibit pets, but you don't want the subtenant to have a pet.

2. Signing the Sublease Agreement

You'll need to put together two copies of the sublease: one for you and one for your subtenant. If you are renting to more than one subtenant, don't prepare a separate agreement for each co-subtenant. After the agreement is signed, co-subtenants can make their own copies of the agreement.

Prepare two identical copies of the sublease to sign, making sure a complete copy of the overlease (the lease you have with the landlord) is attached to each. Each subtenant should sign both copies of the sublease agreement in your presence or in the presence of another witness, such as the building manager. While witnesses aren't required for the lease to be legally valid, a witness could help you authenticate the sublease in court later on, if you need to have it introduced as evidence in an eviction trial. You should then sign both copies. Give one copy of the fully executed sublease agreement to the subtenant(s) and keep the other one for your files.



In New York City buildings with three or more units, local law requires you to attach a "Window Guard Rider" to every lease (whether or not your landlord attached one to your lease). A window guard is a metal device with bars that attaches to the exterior of the window and is designed to keep children from falling from windows. The rider tells the subtenant that the landlord must install window guards in the rental unit if a child ten years of age or younger lives there or if the subtenant requests. (NYC Admin. Code § 17-123; Department of Health Regs. § 12-02.) The subtenant must check one of three boxes on the rider, indicating whether a child ten or under is, or will be, residing in the rental unit; or if the subtenant wants window guards, even if no young children are living in the apartment. After checking one of the boxes, the subtenant must sign and date the rider. See the sample "Window Guard Rider," in Appendix B. The Rider must be printed in not less than ten (10) point type, and must bear the title "WINDOW GUARDS REQUIRED," underlined and in bold face. The words, size and layout of the Rider must comply with New York City Department of Health regulations. You can obtain the Window Guard Rider from the New York City Department of Health or download it from their website. The agency's address, phone number and website are listed in Appendix A.

Sublease Agreement

Clause 1. Identification of Overtenant and Subtenant

This Sublease Agreement ("Agreement") is entered into on _____ between _____ ("Subtenant") and _____ ("Overtenant"). If there is more than one Subtenant, each is jointly and severally liable for the payment of rent and performance of all other terms of this Agreement.

Clause 2. Identification of Premises

Subject to the terms and conditions in this Agreement, Overtenant sublets to subtenant, and Subtenant rents from Overtenant, for living purposes only, the Premises located at _____ ("the Premises"), together with the following furnishings and appliances:

 Rental of the Premises also includes _____
 _____.

Clause 3. Term of the Subtenancy

The term of the subtenancy will begin on _____, 200__, and end on _____, 200__. If Subtenant vacates before the term ends, Subtenant will be liable for the balance of the rent for the remainder of the term.

Clause 4. Payment of Rent and Additional Rent

- a. Regular monthly rent.** Subtenant will pay to Overtenant a monthly rent of \$_____, and additional rent as set forth below, payable in advance on the first day of each month, except when that day falls on a weekend or legal holiday, in which case rent is due on the next business day. Rent will be paid in the following manner unless Overtenant designates otherwise:
- b. Additional rent.** Subtenant will pay to Overtenant, as additional rent, the following monthly charges: \$_____, as well as any other fees or charges defined as additional rent under this Agreement.
- c. Delivery of payment.** Rent and additional rent will be paid:
 - ☐ by mail, to _____
 - ☐ in person, at _____
- d. Form of payment.** Overtenant will accept payment in these forms:
 - ☐ personal check made payable to _____
 - ☐ cashier's check made payable to _____
 - ☐ credit card
 - ☐ money order
 - ☐ cash
 - ☐ electronic check or money transfer submitted to: _____
- e. Prorated first month's rent.** For the period from Subtenant's move-in date, _____, 200__, through the end of the month, Subtenant will pay to Overtenant the prorated monthly rent of \$_____. This amount will be paid on or before the date the Subtenant moves in.
- f. Rent default.** If Subtenant fails to pay rent or additional rent after a personal demand for rent has been made by the Overtenant or Overtenant's agent, or within three days after a written demand for rent has been made by Overtenant or Overtenant's agent or attorney, Overtenant may begin legal proceedings to evict Subtenant and Subtenant's occupants from the Premises.

Clause 5. Late Charges

If Subtenant fails to pay the rent or additional rent in full before the end of the _____ day after it's due, Subtenant will pay Overtenant, as additional rent, a late charge of _____. Overtenant does not waive the right to insist on payment of the rent or additional rent in full on the date it is due.

Clause 6. Returned Check and Other Bank Charges

If any check offered by Subtenant to Overtenant in payment of rent or any other amount due under this Agreement is returned for lack of sufficient funds, a "stop payment" or any other reason, Subtenant will pay Overtenant a returned check charge of \$_____.

Clause 7. Security Deposit

On signing this Agreement, Subtenant will pay to Overtenant the sum of \$_____ as a security deposit. Overtenant will deposit this security deposit in _____ financial institution at _____.

If the building in which the Premises is located contains six or more units, or if the unit is rent-stabilized, the security deposit will earn interest at the prevailing rate. Subtenant may not, without Overtenant's prior written consent, apply this security deposit to the last month's rent or to any other sum due under this Agreement.

If, within 60 days after Subtenant has vacated and left the Premises in as good condition as it was found, except for normal wear and tear, Subtenant has returned keys and provided Overtenant with a forwarding address, Overtenant will return the deposit in full or give Subtenant an itemized written statement of the reasons therefore and dollar amount of any of the security deposit retained by the Overtenant. Overtenant may withhold all or part of Subtenant's security deposit necessary to: (1) remedy any default by Subtenant in the payment of rent; (2) repair damage to the Premises caused by Subtenant, except for ordinary wear and tear; (3) clean the Premises if necessary, and (4) compensate Overtenant for any other losses as allowed under law.

Clause 8. Utilities

Subtenant will pay all utility charges, except for the following, which will be paid by Overtenant:

_____.

Clause 9. Subtenant's Maintenance Responsibilities

Subtenant will: (1) keep the Premises clean, sanitary and in good condition and, upon termination of the tenancy, return the Premises to Overtenant in a condition identical to that which existed when Subtenant took occupancy, except for ordinary wear and tear; (2) immediately notify Overtenant of any defects or dangerous conditions in and about the Premises of which Subtenant becomes aware; and (3) reimburse Overtenant, on demand by Overtenant, for the cost of any repairs to the Premises damaged by Subtenant or Subtenant's guests or business invitees through misuse or neglect.

Subtenant has examined the Premises, including appliances, fixtures, window coverings, and carpeting, if any, and has found them to be in good, safe and clean condition and repair, except as otherwise noted herein.

Clause 10. Sublease Subject to Terms and Conditions of Overlease

a. This sublease is subject to the Overlease dated _____ between _____, as Landlord and _____ as Tenant. Subtenant acknowledges receipt of and has read a copy of the Overlease, which is attached to and forms a material part of this Sublease Agreement. Subtenant agrees to obey and comply with all of the terms, obligations, rules and regulations of the Overlease.

b. Subtenant shall comply with all of the terms and obligations of the sublease. In addition, all of the terms and obligations of the Overlease that apply to Overtenant shall be binding upon Subtenant, except as to the following designated clauses: _____.

c. If Subtenant defaults under this Sublease Agreement by:

- 1) failing to comply with any term, condition or obligation of the Sublease or Overlease, or
- 2) permanently moving out before this Sublease Agreement expires, then Overtenant must give Subtenant notice of default stating the type of violation and directing Subtenant to cure the violation within 5 days. If Subtenant fails to cure the default within the time stated, Overtenant shall terminate the Agreement by giving the Subtenant a written termination notice. The termination notice will give the date the Agreement will end, which shall not be less than 10 days after the date of the notice. If Subtenant and Subtenant's occupants fail to move out on or before the termination date, Overtenant may begin legal proceedings to evict the Subtenant and Subtenant's occupants from the Premises.

Clause 11. Landlord's Consent

This Sublease Agreement [] is [] is not conditioned upon the Landlord's consent. If the Landlord's consent to the Sublease is required, this consent must be received within _____ days from the date of the Sublease. If Landlord's consent is not received within this time, the Sublease will be deemed void, all parties will be released from this Agreement, and all payments will be refunded to Subtenant.

Clause 12. Payment of Attorney Fees and Court Costs

In any legal action or proceeding to enforce any part of this Agreement, the prevailing party ☐ shall not ☐ shall recover reasonable attorney fees and court costs.

Clause 13. Disclosures

Subtenant acknowledges that the Overtenant has made the following disclosures regarding the Premises:

- ☐ Landlord's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
☐ Other disclosures: _____

Clause 14. Notices

a. Notices to Subtenant. Any notice from Overtenant, or Overtenant's agent or attorney will be considered properly given to Subtenant if in writing; signed by or in the name of the Overtenant or Overtenant's agent; and addressed to Subtenant at the Premises and delivered to Subtenant personally, or sent by registered or certified mail to Subtenant at the Premises. The date of service of any written notice by Overtenant to Subtenant under this Agreement is the date of delivery or mailing of such notice.

b. Notices to Overtenant. Any notice from Subtenant will be considered properly given to Overtenant if in writing and delivered or sent to Overtenant by registered or certified mail at the following address:

_____ or at another address for which Overtenant or Overtenant's agent has given Subtenant written notice.

Clause 15. Abandoned Property

When this Agreement expires or is terminated, Subtenant must remove all personal property and belongings from the Premises. If any of Subtenant's property remains in the Premises after the tenancy ends, Overtenant may either discard the property or store it at Subtenant's expense. Subtenant agrees to pay Overtenant for all costs and expenses incurred in removing and/or storing such personal property. The terms of this clause will continue to be in effect after the end of this Agreement.

Clause 16. Additional Provisions

Additional provisions are as follows: _____

Clause 17. Validity of Each Part

If any portion of this Agreement is held to be invalid, its invalidity will not affect the validity or enforceability of any other provision of this Agreement.

Clause 18. Entire Agreement

This document, including any attached riders, constitutes the entire Agreement between the parties, and no promises or representations, other than those contained here and those implied by law, have been made by Overtenant or Subtenant. Any modifications to this Agreement must be in writing signed by Overtenant and Subtenant.

Date Overtenant

Street Address

City, State & Zip Phone

Date Subtenant Phone

Date Subtenant Phone

Date Witness Phone



Crime and Security

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When looking for a place to rent, it's easy to be so seduced by a river view or an eat-in kitchen that you overlook a unit's basic security inadequacies. But when choosing an apartment, security should be as big a priority as cost, convenience and amenities. While New York landlords are expected to take reasonable precautions to protect tenants from foreseeable harm, you can't expect your landlord to build a moat around the building and provide armed security. *Both* you and your landlord are responsible for your safety and security. It's up to you to find an apartment located in a safe, secure building. And it's up to your landlord to take reasonable steps to keep it that way.

This chapter examines the security features tenants should look for in a new rental, as well as the security measures that landlords are legally required to take to safeguard the property.



Related topics covered in this book include:

- Lease and rental agreement provisions prohibiting tenants' illegal activities and disturbances: Chapter 2
- Understanding the warranty of habitability and your right to a safe and livable home: Chapter 9.

A. Play It Safe When Selecting an Apartment

A landlord who promises specific security features—such as a doorman, security patrols, interior cameras or alarm systems—must either provide them or be liable (at least partially) for any criminal act that would have been prevented by the security features. Remember, your lease is a contract, and if it includes a “24 hour security” promise or a commitment to have a doorman on duty at night, you have a right to expect it. Even oral descriptions of security bind the landlord if they were a factor that led you to rent the unit. You can often also rely on statements about security in advertisements.

These days, however, most landlords avoid making claims about good security. They're too afraid of getting sued for misrepresentation if a tenant gets mugged on the property. So it's up to prospective tenants to survey a property's security features. Here are some aspects to consider.

1. Common Area Concerns

The security features in a property's common areas are every bit as important as those found in the rental unit. Here's what to look for.

Access control. How easy is it for anyone to enter the building and knock on the front door to your apartment? If just anyone can enter the property, make sure the unit is in a safe neighborhood. We explain how to check neighborhood crime statistics in Section 3, below.

Better yet, whenever possible, choose a property with a system that controls access by unauthorized guests. In apartment buildings, lobby attendants such as doormen and security guards screen visitors and make it tough, but not impossible, for intruders to gain access to the building's common areas. In garden apartment settings, manned gates and fencing may effectively control unauthorized vehicles and pedestrians from gaining access to the property. In either case, inquire as to whether an attendant is stationed in the lobby or at the gate at all times, or just part of the day or week.

Some newly built or converted properties use electronic card access systems, in addition to or instead of an attendant, to limit access to the property. Often, such systems control access not just to the front door, but also to elevators, parking areas, laundry rooms, gyms or pools. Electronic card access systems afford better control if a card is lost or falls into the wrong hands. If an electronic card is lost or stolen, the card may be electronically deactivated so as not to open any door on the property (like a hotel card/key after you check out). If a traditional key falls into the wrong hands, then all affected door locks must be changed and everyone else must get new keys to maintain security.

Lighting. Visit the property after dark. Are the exterior and parking areas of the building well lit? Lighting is adequate if it permits you to read building numbers, safely navigate the walkways and identify a potential threat from 100 feet away. Sufficient illumination is an important safety feature indoors, as well, since intruders can lurk in semi-dark elevators, hallways and laundry rooms.

Landscaping. Overgrown shrubs can present an effective cover for a mugger. Check to make sure trees and bushes near tenant walkways are closely trimmed.

Surveillance systems. Many large urban properties are equipped with video surveillance systems aimed at perimeter doors or common rooms and monitored by the lobby attendant. Others are equipped with audio systems that permit a security guard to hear a tenant's call for help from a common area like a parking lot, elevator or laundry room. Such systems provide an extra level of security if—but only if—a security attendant continuously monitors them.

Key control system. Ask the landlord about her system for controlling access to building and apartment keys. Professional landlords implement key control systems to code, store and monitor each passkey and apartment door key. When a building staff member removes a tenant's key from a locked key box, for example, the time, date, unit number and person taking and returning the key should be recorded. A haphazard system can result in building passkeys and keys to tenant-installed locks falling into the wrong hands.

2. Apartment Security

Every property has some apartments that are less secure than others, simply due to their location within the property. In this section, we look at apartment locations to avoid and review some door and window devices that, regardless of the apartment's location, will improve its security.

High versus low. First floor and basement apartments are more vulnerable to break-ins since all or some of their windows are at ground level. If you have a choice, opt for a unit located on or above the second floor, which will be harder to burglarize from the outside (unless there are exterior stairs). If you have no choice, security gates and bars may be added to windows and doors that are accessible from the ground floor, provided the landlord consents and the window or door is not designated as a fire exit.

Front versus back. Apartments that face the "front" (street entrance) of a property are generally safer than those that face side or rear yards, alleys, courtyards or airshafts. That's because the front of a property, though sometimes noisier, is apt to be better illuminated and more readily observed by neighboring tenants and passersby.

Deadbolt lock. It's easy for intruders to force open the lock on a doorknob with pliers or "slip" the lock with a shim or credit card. Deadbolt locks, which

have a beveled casing, are much more difficult to penetrate. Just make sure the lock can be opened from the inside with the turn of a finger. Deadbolts that require a key to open from the inside violate fire codes in many localities, including New York City.

Peephole. A peephole is a device installed on the entrance door that permits you to see, from the inside, a person standing directly outside the door. Peepholes are so effective that they're legally mandated in some localities. If an apartment you are considering doesn't already have one, ask the landlord to add one before you sign the lease. They're inexpensive and easy to install. Section C, below, identifies those buildings in which peepholes are legally mandated.

Sliding glass windows and doors. Obviously, window and door latches are your first line of defense, especially if you're on the first floor. However, latches are less likely to be pried and subject to forced entry if the windows and doors are installed with special anti-lift and anti-slide features built into the framing.

Fire escapes. While a fire escape provides a quick means of egress in the event of an emergency, it can also supply a thief with easy access to an upper floor apartment's window. In some localities, including New York City, it's illegal to install security gates or bars over windows that lead to a fire escape. They may be alarmed, however.

Two-way intercom system. An intercom system permits tenants to screen visitors from their apartment, before releasing the front door lock and letting them enter the building. Some systems enable tenants to see, as well as speak with, visitors. In some areas, intercom systems are required under law (see Section C, below).

Apartment security system. A security system sounds an alarm if someone opens a window or door in the apartment when the alarm is set. Some systems also alert the police if the alarm is set off. While these systems are excellent, they are expensive and are usually found only in high-end urban rental buildings.



Take advantage of free police security surveys.

Police departments in many localities provide security surveys of homes and apartments, free of charge. The surveys are usually conducted by officers who are trained in the latest crime prevention measures and who inspect locks, windows, gates and any other installed

security devices to make sure they meet recommended standards, and suggest additional devices, where applicable. For more information, contact your local police department or precinct.

3. How Safe Is the Neighborhood?

If you have a choice of neighborhoods in which to rent, checking local crime statistics may help you decide which area is safest. Local police departments, including the New York City Police Department, maintain data on the number of burglaries, robberies, assaults, rapes and murders that occur over specific time periods in various neighborhoods. Crime statistics are available to the public upon request by calling or writing the local police department. Some New York police departments post crime statistics on their websites.



Weekly, monthly and historical crime statistics are available for each of New York City's 123 police precincts. The data are updated each Monday. You can view and print the statistics on the New York Police Department's website (www.ci.nyc.ny.us/html/nypd; click "crime statistics" from the list of options) or obtain copies by calling or writing to the specific precincts you are interested in.

For details on information available on registered sex offenders, see the Chapter 1, Section F, discussion of New York's version of Megan's Law.

B. Your Landlord's Basic Duty to Keep You Safe

While landlords are not expected to keep tenants safe from every conceivable danger, landlords do have a general common law duty to protect you and your guests from foreseeable harm caused by the criminal conduct of others while on the property. (*Nallan v. Helmsley-Spear, Inc.*, 50 N.Y.2d 507 (1980).) New York's highest court has ruled that landlords have "a duty to maintain minimal security measures, related to a specific building itself, in the face of foreseeable criminal intrusions upon tenants." (*Miller v. State of New York*, 62 N.Y.2d (1984).) But what's foreseeable? It's a tough call. Generally, to be foreseeable, criminal conduct must be reasonably

predictable based on a prior occurrence of similar criminal activity at or very near the property.

Minimal security measures vary according to the neighborhood's crime rate and the physical configuration of the property itself. However, courts have found that the landlord's duty to protect tenants from foreseeable harm includes providing proper illumination within and outside the premises, working doors and locks, and in some areas, installing an intercom system or lobby attendant. (State and local laws require intercom systems at certain properties. See Section C, below, for details.)

Landlords who fail to provide adequate security against foreseeable crime on the property have been successfully sued by tenant crime victims on a negligence theory. (Another landlord liability theory—breach of the warranty of habitability—is discussed in Section D, below.) Prevailing tenants have been awarded money damages to cover hospital bills, lost earnings and pain and suffering. To prevail, the tenant must demonstrate that the landlord *breached* her duty of care by failing to provide reasonable security measures, under the circumstances. In many such cases, a landlord's failure to repair a known defective entry door lock in an area with a known high crime rate is sufficient.

If the incident involves criminal activity or negligence by a building staffer, the court may focus on the landlord's methods for hiring, training and supervising the apartment manager, the leasing consultants, the maintenance personnel or the security officers. For example, a landlord who fails to conduct criminal background checks on building employees with access to apartment pass keys could be found negligent and liable for money damages if a handyman, with a readily discoverable history of arrests for rape and sexual assault, sexually molests a tenant.

C. Minimal Security Requirements in New York City and Buffalo

In addition to a landlord's common law duty to keep tenants safe from foreseeable harm (explained in Section B, above), state multiple dwelling laws and local ordinances require landlords in New York City and Buffalo to install specified security devices at certain properties. In this section, we examine state laws and local ordinances that apply in New York

City and Buffalo. Tenants living outside these areas should contact their municipal clerk or police department to find out whether there are similar laws or ordinances that apply in their city, town or village. Chapter 9 discusses ways in which tenants may compel landlords to follow housing code requirements.

1. Multiple Dwellings in New York City and Buffalo



Tenants who live in duplexes and single family houses, and all tenants outside New York City and Buffalo may skip this section.

New York State's Multiple Dwelling Law, which applies to buildings with three or more units in New York City and Buffalo, requires landlords to install certain protective devices in their buildings. This section reviews what is required under state law.

a. Peepholes

Your landlord must provide and maintain a peephole in the entrance door to your apartment that enables you to view from the inside of the entrance door any person immediately outside of your entrance door. (MDL 51-a.)

b. Deadbolts

Landlords of New York City buildings with three or more units must install deadbolt locks as described in Section 2, below. Tenants in buildings with three or more units in Buffalo, as well as New York City, are legally permitted to install and maintain their own locks on their apartment entrance doors in addition to the lock supplied by the landlord. (MDL § 51-c.) The lock may not be bigger than three inches wide. You must provide your landlord with a duplicate key to any privately installed lock upon the landlord's request. Failure to provide a copy of the key can lead to eviction. See Chapter 16, Section F, for details.

c. Intercom Systems

Intercoms are required in all buildings with eight or more units that were built or converted to residential use after 1967. Older buildings with eight or more units must also have an intercom if a majority of the tenants request an intercom system from the landlord. (As discussed in Chapter 4, rents for regulated

tenants may be increased as a result of an improvement such as the intercom installation.) The intercom must be located at the front entrance to the building and in each tenant's unit. The system must permit each tenant to be able to talk and to and hear visitors and be able to buzz them into the building. (MDL § 50-a.)

d. Self-Closing, Self-Locking Building Doors

Owners of buildings built after 1967 must equip their buildings with self-closing and self-locking entrance doors. These doors must be kept locked at all times, except when a doorman or other attendant is on duty at the entrance. This requirement doesn't just apply to the building's lobby or front entrance. It also applies to entrances from side streets, passageways, courts and yards, as well as entrances to your building's cellar, if any. (MDL § 50-a.)

e. Self-Closing Roof Doors

Most buildings have doors, sometimes known as scuttles, that lead to the rooftop. They are often located at the top of a stairwell. By law, these doors must be self-closing and secured. But they can't be self-locking. They must be fastened on the inside with movable bolts, hooks or keyless locks. (MDL § 50-a.) That way, tenants may unlock the door from the inside as a means of escape, in the event of a fire or explosion in the building.

f. Elevator Mirrors

Muggers have been known to hide unnoticed in an elevator cab's front corner, only to pounce on a tenant after they have entered the elevator. To make elevator cabs safer, state law requires landlords to install at least one mirror in all self-service elevators so tenants may see—prior to entering—if anyone is already in the elevator. (MDL 51-b, NYC Admin. Code 27-2042.)

2. New York City Law Requires Additional Protective Devices



This section applies to New York City tenants only. Tenants outside New York City should contact their local government offices to find out if local ordinances require landlords to install any specific safety and security devices in rental buildings or apartments.

The New York City Housing Maintenance Code requires landlords to install certain safety devices on the front doors to tenants' apartments. It doesn't matter how big your building is, unless otherwise noted.

If you live in New York City, the entrance door to your apartment should be equipped with the following:

- a peephole, unless the rental unit is located in a one- or two-family home where it is possible to see from the inside any person immediately outside the entrance door. (NYC Admin. Code § 27-2041.) (The peephole requirement described above applies only to buildings with three or more units.)
- a chain guard, so as to permit partial opening of the door. (NYC Admin. Code § 27-2043(b).)
- a key lock in the entrance door and at least one key.
- in buildings with three or more units, a heavy-duty latch set and a heavy-duty deadbolt operable by a key from the outside and a thumb-turn from the inside. (NYC Admin. Code § 27-2043(a).)

D. Security Devices and the Warranty of Habitability

In some parts of New York, good locks, security personnel, exterior lighting and secure common areas are an absolute necessity, as important to the tenants as are water and heat. As a result, inadequate security safeguards can breach the warranty of habitability. (*Carp v. Marcus*, 112 A.D.2d 546, 491 N.Y.S.2d 484 (3d Dep't 1985).)

The warranty—and tenant options for its breach, such as rent withholding and suing the landlord—are covered in Chapter 9. Here are some specific cases regarding security devices:

Defective unit door locks. A secure door lock is essential to a tenant's safety. A landlord's failure to install or fix an entrance door lock compromises your security and violates the warranty of habitability. (*610 West 142nd St. Corp. v. Braxton*, 137 Misc.2d 567, 521 N.Y.S.2d 370 (Civ. Ct., N.Y. County, 1987)

affirmed as modified, 140 Misc.2d 826, 535 N.Y.S.2d 870 (App. Term, 1st Dep't, 1988).) If your landlord refuses to fix your front door lock, you can seek damages for breach of the warranty (*Jangla Realty v. Gravagna*, 112 Misc.2d 642, 447 N.Y.S.2d 338 (Civil Ct., Queens County, 1981)); or, if you are injured or damaged as a result of the landlord's failure to act, you can sue (depending on the circumstances) for negligence or breach of contract.

Inoperable building door locks and buzzer systems.

Dysfunctional building entry door locks and buzzer systems affect habitability. In one case, the landlord installed a front door lock and buzzer system, and obtained a rent increase for the installation. The door lock and buzzer system later fell into disrepair. When a tenant was subsequently killed in the building's lobby, a Brooklyn court found a breach of the warranty had occurred, since security had become an "essential service affecting habitability." (*Brownstein v. Edison*, 103 Misc.2d 316, 425 N.Y.S.2d 773 (Sup. Ct., Kings County, 1980).)

Drug-dealing neighbors. When a landlord fails to take reasonable steps to protect tenants from threats and harassment from known drug dealers or other criminals in the building, a breach of the warranty of habitability may exist. (*Auburn Leasing Corp. v. Burgos*, 160 Misc.2d 374, 609 N.Y.S.2d 549 (Civ. Ct., Queens County, 1994).) Landlords may immediately terminate a tenancy when a unit is used for drug selling or other illegal activities. (For details, see Chapter 16, Section D) And increasingly, courts are looking to landlords to evict drug-dealing tenants.

Thefts and burglaries. As discussed at the beginning of Section B, above, there's a legal trend that makes landlords responsible to tenant crime victims when a crime on the premises is foreseeable, and the landlord does nothing to warn or protect tenants. A landlord of a 366-unit garden apartment complex on Long Island, for example, was found to have breached the warranty by failing to take steps to protect tenants in the face of ten known thefts and burglaries committed in a one-year period. (*Highview Assoc. v. Kofert*, 124 Misc.2d 797, 477 N.Y.S.2d 585 (Dist. Ct., Suffolk County, 1984).)

Drug Dealing Problems in the Building or Neighborhood

State law imposes a statutory duty on landlords to evict tenants and other occupants who are known to be engaging in illegal drug sales or manufacturing on the property. (RPL § 231(2).) Landlords who fail to take steps to remove tenants whom they know are engaging in commercial drug activity are liable for any resulting damage, including money damages for injuries to other tenants, guests and employees that occur on the property.

A neighboring tenant who lives within 200 feet of a rental unit used for illegal or immoral purposes is authorized under state law to bring an eviction proceeding against the tenant. (RPAPL § 715(1).) In

practice, tenants rarely use this power—probably fearing reprisals from the tenant conducting illegal drug business.

The same law authorizes the District Attorney's office to order a landlord to evict a tenant who uses a rental unit illegally. Ordinarily, this is triggered by the arrest of the tenant on drug charges at or near the property. You can help move this process along by providing a tip to the police about the drug activities of a neighboring tenant. Many police departments accept anonymous tips. In New York City, tenants may call the NYPD's Narcotics Division (888-374-DRUG) to report any illegal activity involving drugs or drug gangs.





How Month-to-Month Tenancies End

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7he best way to understand a month-to-month tenancy, and how it ends, is to contrast it with a fixed-term tenancy. Fixed-term tenants sign leases that run for an agreed-upon term, usually one or two years. When the expiration date specified in the lease arrives, the tenancy automatically ends. No special notice is required. If you're a month-to-month tenant, on the other hand, you don't have a lease. You could have an oral or written rental agreement. Or, you could have become a month-to-month tenant by remaining in your unit after your old lease ended and continuing to pay rent. (New York law transforms such occupants into month-to-month tenants. (RPL § 232-c.)) Either way, your tenancy automatically continues, month after month, until either you or your landlord decides to end it.

You don't need a special reason, or any reason, to end your month-to-month tenancy. (*Park Summit Realty Corp. v. Frank*, 56 N.Y.2d 1025, 453 N.Y.S.2d 643, 439 N.E.2d 358 (1982).) You can terminate it because your neighbor makes too much noise, your landlord doesn't fix problems as quickly as you'd like or simply because you'd like to move to a nicer apartment. Similarly, your landlord can end your tenancy for any reason—for example, if you always pay rent late or are too noisy. In fact, your landlord doesn't even need to have a reason for terminating—as long as it's not for a discriminatory or retaliatory reason.

This chapter explains New York rules that tenants must follow to terminate a month-to-month tenancy, including how much notice you must give to your landlord, what your notice must say and how you must deliver it—everything you need to do it yourself. This chapter also explains the rules that apply to landlords and your legal options if you've received a termination notice from your landlord.



Related topics covered in this book include:

- Understanding lease and rental agreement provisions on notice required to end a tenancy: Chapter 2
- Responding to a three days' notice for nonpayment of rent: Chapter 15
- Dealing with termination notices for fixed-term or rent-regulated tenancies: Chapter 16
- Getting your security deposit back when you leave and other move-out issues: Chapter 18.

Landlord Restrictions on Ending a Month-to-Month Tenancy

The general rules for terminating a tenancy described in this chapter don't apply in these situations:

- **Fixed-term tenants.** If you have a fixed-term lease, your landlord may not terminate the lease before it expires, unless you refuse to pay rent or violate a significant term of the lease, such as creating a nuisance or damaging the property. Chapter 16 discusses the grounds on which fixed-term leases may be terminated.
- **Rent-regulated tenancies.** As long as you pay rent, your rent-controlled or rent-stabilized tenancy can't be terminated except on very specific grounds, such as your violation of a substantial obligation of the tenancy, illegal or objectionable conduct or refusing to provide access to the rental unit. Chapter 16 also details the grounds on which landlords may end rent-regulated tenancies.
- **Discrimination.** It is illegal for your landlord to end your tenancy because of your race, religion or other reason constituting illegal discrimination. Chapter 11 discusses anti-discrimination laws.
- **Retaliation.** Your landlord may not legally terminate your tenancy to retaliate against you for exercising any tenant-related right under the law, such as your right to complain to governmental authorities about defective housing conditions or to organize a tenant association. Chapter 11 also discusses landlord retaliation.



Model Letters and Sample Forms Included in This Chapter

- Tenant's Notice of Intent to Move Out
- Letter Extending Tenant's Move-Out Date
- Letter Asking for Reinstatement of Tenancy
- Thirty (30) Day Notice of Termination

A. How You Can End a Month-to-Month Tenancy

Once you've decided to move out, your next step is to figure out what kind of notice, if any, you are

required to give the landlord. It's important to follow the rules on termination, since failing to provide the right notice can make you liable for rent after you've moved out. (Section 3, below, describes how.) The rules that apply to your tenancy depend on where you live and what your rental agreement says. Read the section below that refers to your situation.

1. New York City Tenants Have It Easy

There isn't any law requiring New York City tenants to give their landlords notice that they intend to move out. Unless they have agreed otherwise, a New York City tenant may simply hand his landlord the keys at the end of the month and wave goodbye—without being responsible for paying any additional rent.

But (and this is a BIG BUT), if you signed a rental agreement that requires you to give notice of termination, you must give notice in the exact manner specified in your agreement. It may require more than one month's notice, specify written notice or prescribe a certain manner of delivery, such as certified mail. If so, you are required to follow the specific steps laid out in your rental agreement.

For instance, if your rental agreement requires 30 days' written notice of termination, an oral notice will not suffice, nor will a written notice given 28 or 29 days prior to move-out. Giving improper or insufficient notice of termination may expose you to liability for rent for a period of time after you move out. If your rental agreement requires written notice of termination, you can adapt the model Tenant's Notice of Intent to Move Out letter shown below.

2. Tenants Outside New York City Must Always Give Notice

If you live outside New York City, state law requires you to provide your landlord with at least one month's notice of termination (RPL § 232-b), unless your landlord has agreed to less notice. Your notice may be oral or written, so long as you make it clear that you intend to move out on a definite date, at least one month from the date you give notice.

EXAMPLE: When an Albany tenant paid rent on July 14, he told his landlord "I'm going to move." The tenant didn't specify when he intended to move. One month later, on August 15, the tenant

moved out. The landlord sued the tenant for rent from August 15 to September 14, claiming that the tenant moved out without notice. A judge ruled that the tenant's notice, while timely, was too indefinite to be valid. The tenant owed rent to the landlord for the one-month period after he moved out. (*McGloine v. Dominy*, 233 N.Y.S.2d 161 (1963).)

Written notices may be mailed or hand-delivered to the landlord.

You can give notice at any time—in other words, you don't have to give notice so that the tenancy will end on the last day of the month. If a tenancy ends mid-month, you must pay until that date of the following month—regardless of whether you move out sooner.



Check your rental agreement for more stringent requirements regarding written notice, certified mail, termination date or other issues. You can't give oral notice if your rental agreement requires written notice of termination. Similarly, your agreement may require your termination notice to be sent via certified or registered mail. In such cases, hand delivery or regular mail won't suffice. To prevent you from creating move-out dates that do not correspond to the end of your rental period, some landlords insert a clause in the rental agreement that requires notice to be given only on a certain day of the month—the day that rent is due, usually the first of the month. This means that if you decide on the fifth of the month that you need to move, you'll have to wait until the first day of the following month to give notice, and you'll be obliged to pay for the entire month, even if you leave earlier.

3. Always Use Written Notice of Intent to Move Out

We recommend using a written termination notice in every instance—even if it's not legally required. While a written notice means more paperwork, it's far safer and worth the extra effort. For example, using a written notice will prove useful should the landlord try to sue you for nonpayment of rent or take more rent than he is entitled to from your security deposit. You will have a much stronger case against the landlord if you can produce a written notice that you will be moving on a specific date instead of your version

of a conversation (which will undoubtedly be disputed by the landlord).

A model Tenant's Notice of Intent to Move Out letter is shown below. Use this to prepare your own letter to your landlord when you plan to move.

Tenant's Notice of Intent to Move Out

April 3, 200X

Leo Klein
25 Quackenbush Square
Albany, NY 12207

Dear Mr. Klein,

This is to notify you that we will be moving from 999 Brook Lane, Apartment Number 11, Albany, NY, on May 2, 200X, one month from today. This provides at least one month written notice as required in our rental agreement.

Sincerely,

Patti Ellis

Patti Ellis, Tenant

Joe Ellis

Joe Ellis, Tenant

When you mail your notice of intent to move out, make sure to get a "proof of mailing" from the post office. This is an official receipt that shows the mailing address and date that your notice was mailed. Keep the receipt in a safe place with your rental agreement and other important documents.

4. Postponing Your Move-Out Date

If, after you give notice, it turns out that you need to stay in the rental unit longer, ask the landlord's permission to stay a few days or weeks more, at prorated rent. Explain why your plans have changed—perhaps your new apartment isn't ready yet. It might help if you prepare a written agreement to that effect for the landlord's signature. Use the Letter Extending Tenant's Move-Out Date, below, as a model in preparing your own. But if your landlord has already rented your unit, it may be too late and you'll have to make alternate arrangements.

Though it may be tempting to just stay in your old unit until your new home is ready, "holding over"—the legal term for remaining in occupancy after your tenancy ends—could have legal consequences. Your landlord may immediately begin a holdover eviction proceeding against you and seek a money judgment against you for daily "rent" based on the unit's fair market rental value (which might exceed your old rental rate), attorney fees (if your lease or rental agreement so provides) and consequential damages. Chapter 16 discusses holdover eviction proceedings.

Letter Extending Tenant's Move-Out Date

July 20, 200x

Armand LeFleur
Lexie Realty Company
420 Lexington Avenue
New York, NY 10017

Re: Apt. 7-C, 420 Lexington Ave, New York, NY

Dear Mr. Le Fleur,

On July 1, I gave you a 30-day notice of my intent to move out on July 31. As discussed on the phone today, my new apartment will not be ready for occupancy until August 5, 200x. This letter shall serve to confirm our agreement that I may remain in occupancy through August 5, 200x. As agreed, I am enclosing my check #2323 in the amount of \$233.34 representing rent for August 1st through August 5th, 200x.

Thank you for your kind attention to this matter. Any questions, please call me at work at 555-9875.

Sincerely,

Lana Ott

Lana Ott

5. The Consequences of Giving Too Little Notice

Sometimes, circumstances such as a family emergency or a new job will force you to give the landlord a too-short notice of your intent to move, or no notice

at all before you give back the keys. The consequences of a short notice depend on the geographic location of the rental unit and the terms of the rental agreement.

As explained above, month-to-month tenants in New York City aren't legally required to give the landlord any advance notice that they plan to move out, unless the rental agreement requires it. Tenants outside New York City must always give the landlord at least one month's notice, unless the rental agreement provides a shorter notice period.

If you give too little notice, you can remain on the hook for rent through the end of the required notice period, even after you've moved out. Suppose you move out after giving your landlord a 20-day notice of your intention to move, when state law (or your rental agreement) requires one month's notice. Unless a new tenant moves into the unit right away, your landlord may deduct rent for the remaining ten days from your security deposit if you have one, or sue you in small claims court for that amount. (Chapter 18, Section E, discusses permitted security deposit deductions.) Chances are, though, that it will be hard for your landlord to find a new tenant in such a short time period.

No Prior Notice Is Required When the Premises Are Unsafe, Inhabitable or Destroyed

If the landlord seriously violates the rental agreement and fails to fulfill his legal responsibilities—for example, by not correcting serious health or safety problems—you may be able to legally move out with no written notice and no further obligation to pay rent. (RPL § 227.) Called a constructive eviction, this doctrine typically applies only when living conditions are intolerable—for example, if you have had no heat for an extended period in the winter. What constitutes a constructive eviction varies under the circumstances. Generally, if a rental unit has serious habitability problems for anything but a very short time, you may be entitled to move out without giving notice, as described in Chapter 9, Section F.

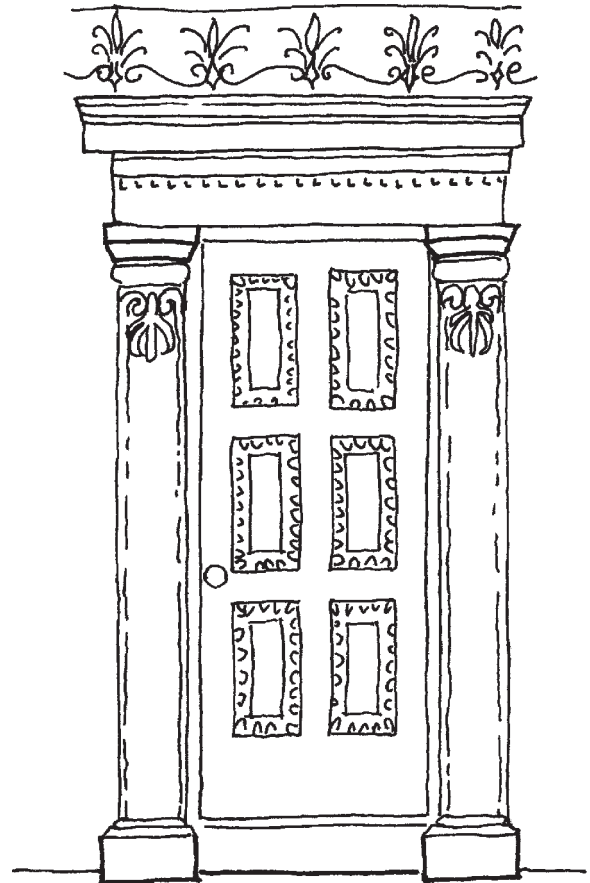
Similarly, if the premises are destroyed or seriously damaged by fire or other disaster, you may walk away and consider the tenancy over, without prior notice to the landlord and without further liability for rent (also discussed in Chapter 9, Section F).

6. If You Change Your Mind About Leaving

For all sorts of reasons, you may change your mind after giving your landlord formal notice of your intent to move. But if you can't convince the landlord to reinstate your tenancy, or the unit has already been rented again, it's too late. You'll have to move.

If you now want to stay on, promptly call the landlord, explain your change of heart and ask for a meeting. Explain why your plans have changed—for example, you were moving because you thought you were getting a job transfer, but your employer changed its plans. You are more likely to influence the landlord to reinstate your tenancy if you can show that you now plan to stay for an extended period of time, not just a few weeks.

If the landlord agrees to reinstate your tenancy informally—perhaps over the phone—fine, but be sure to follow up with a confirming letter. If your landlord doesn't immediately write back disagreeing



with your understanding, this is probably enough to legally reinstate the old rental agreement. But to be safe, offer to sign a new rental agreement. A model letter asking a landlord to do this is shown below. Note how the tenant has built in a favorable outcome: The letter states that if she doesn't hear from her landlord within a reasonable period of time, the old rental agreement will be back in force.

If you are having trouble communicating with your landlord, see if a local mediation program can help. See Chapter 19 for more on mediating landlord-tenant disputes.

Letter Asking for Reinstatement of Tenancy

October 22, 200x

Ken Wong
Wong Realty Company
3 Park Street
New York, NY 10017

Re: Apt. 2B, 3 Park Street, New York, NY

Dear Mr. Wong,

On October 1, I gave you a 30-day notice of my intent to move out on October 31, in order to accept a transfer to my company's headquarters in London.

After I gave notice, however, my job transfer was canceled and I would like to continue living here. I hope that you have not rented my apartment already, and will cancel my 30-day notice and continue to rent to me as you have done for the last year. My hope is to continue to live here for at least six months.

Thank you very much for considering my request. Assuming that I can stay on, I would be happy to sign another rental agreement or, if you prefer, we can resume using the old agreement. If I don't hear from you within a few days, I'll assume that we'll be operating under the old rental agreement. I have enclosed a copy of my supervisor's recent memo canceling my job transfer.

Sincerely,

Les Costello
Les Costello

B. How the Landlord May End a Month-to-Month Tenancy



Rent control laws do not allow landlords to terminate a rent-controlled tenancy except for just cause, or a legally recognized reason. Most rent-controlled tenants don't have leases, but are protected from eviction by rent control laws. If you are a rent-controlled tenant and your landlord does not have a legally recognized reason to terminate your tenancy, you should ignore the notice and fight the eviction in court. Chapter 16 covers the grounds upon which a rent-controlled tenancy may be terminated and how to fight an eviction in court.

To end your month-to-month tenancy, your landlord must give you a prescribed amount of notice that your tenancy is ending. After the notice period ends, you no longer have the legal right to occupy the premises. If you stay, you may be evicted.

State law specifies the minimum amount of notice your landlord must give you and the way the notice must be given. New York City landlords must follow more stringent rules to terminate a month-to-month tenancy. If your rental agreement requires more notice than the legal minimum, the landlord must comply with the rental agreement and give you more time to leave.

It's important for tenants to know these rules so they can determine whether their landlord's termination notice meets the legal requirements. Why bother? Courts are strict when it comes to termination notices. If the landlord doesn't follow all the rules—say, by giving too little notice or delivering the notice the wrong way—you have a “technical” defense you can raise if the landlord begins an eviction proceeding against you based on the notice. But be forewarned—your landlord is likely to do it right the next time. Chapter 16 discusses holdover evictions and how tenants may raise technical defenses in court.

The following sections describe landlord termination requirements for rental units located within and outside New York City.



Your landlord may not use “self-help” to evict you. Landlords must follow specific termination procedures and may not threaten or forcibly evict you or simply throw your belongings on the street. Only

marshals, sheriffs and other designated law enforcement agents may carry out court-ordered evictions—after the landlord has brought a holdover eviction proceeding and obtained a judgment of possession and warrant directing the sheriff or marshal to evict you. A judge will not sign an eviction order unless and until your landlord has established that you were given a termination notice in the manner prescribed by state statute.

1. How New York City Landlords May End a Tenancy

Unlike their country cousins, New York City landlords must jump through several hoops to properly terminate a month-to-month tenancy. Here's what's required.

a. Legal Requirements for Notice

If you live in New York City, your landlord's notice must meet specific requirements to be valid. It must:

- give you at least 30 days *written* notice of termination (RPL § 232-a)
- state the exact date that the month-to-month tenancy will end; if your tenancy runs from the first of the month (as is most common), the termination date must fall on the *last day* of the month (*Clarke v. Shepard*, 188 Misc. 588, 68 N.Y.S.2d 707 (App. Term, 1st Dep't, 1947)), and
- warn you that the landlord will begin eviction proceedings to recover possession of the rental unit if you fail to move out on or before the termination date (RPL § 232-a).

The words in the termination notice must be crystal clear. You should have no doubt that the landlord is terminating your tenancy as of a definite date, that you're required to move out of the rental unit by then and that you'll be sued if you don't leave. Any murky, misleading or inconsistent language will invalidate the notice.

To help you identify a termination notice, we've included a sample below. There's no official form notice that landlords must use. Notices that look different or use different words than our sample may still be effective, so long as they meet the requirements set forth in this section.

EXAMPLE 1: Justin is a month-to-month tenant who pays rent on the first of each month. Selma, Justin's landlord, wants Justin to move out by

November 1. On October 1, Selma's manager hands Justin a 30-day termination notice. The notice tells Justin that he must move out on October 31. Because the notice was served 30 days before the October 31 termination date, the notice is valid under state law. (Based on facts from *Seminole Housing Corp. v. M & M Garages, Inc.* 78 Misc.2d 755, 359 N.Y.S.2d 711 (Civ. Ct., Queens County, 1974) modified on other grounds, 78 Misc.2d 762, 359 N.Y.S.2d 710 (App. Term, 2d and 11th Jud. Dists., 1974) aff'd 47 A.D.2d 651, 364 N.Y.S.2d 26 (2d Dep't 1975).)

EXAMPLE 2: Jayne is a month-to-month tenant who pays rent on the first of each month. Mike, Jayne's landlord, wants Jayne to move out by March 1. On February 1, Mike's building superintendent hands Jayne a 30-day termination notice. The notice tells Jayne to move out on February 28. Mike's termination notice is invalid under state law because it gave Jayne only 27 days' notice of termination. The notice is not legally sufficient. To be valid, Mike's notice should have been served on or before January 29—which would have given Jayne 30 days' notice. If Mike tries to evict Jayne based on the notice, she should point out this problem to the court and ask to have the eviction case dismissed.

If you pay rent on a day other than the first of the month, such as the 15th of the month, your termination notice should end on the last day of the tenancy month, not the last day of the calendar month. So if you pay rent on the 15th day of the month, for instance, your tenancy runs from the 15th of one month to the 14th of the next month. The termination notice, therefore, must terminate the tenancy as of the 14th day of the month.

EXAMPLE: Roberto is a month-to-month tenant who pays rent on the 15th of the month. Ben, his landlord, wants to end Roberto's tenancy. On May 23, Ben's manager hands Roberto a 30-day termination notice that tells Roberto to move out on June 30. While the notice was served more than 30 days before the termination date, the notice is invalid since it didn't terminate the tenancy as of the 14th day of the month. (*Lindquist v. McAlpin*, NYLJ, 2/22/91, p. 32, col. 2 (App. Term, 9th and 10th Jud. Dists.).)

Thirty (30) Day Notice of TerminationTo: Gail Brousal and William H. Hogeland

("Tenants") and any and all persons occupying the premises

Re: Apartment "B"278 Henry Street, Brooklyn, NY 11201 ("Premises")

PLEASE TAKE NOTICE, that the undersigned Landlord elects to terminate your monthly tenancy as of December 31, 200X, a date at least 30 days' from the date of service of this Notice upon you.

PLEASE TAKE FURTHER NOTICE, that you must surrender and vacate the Premises on or before December 31, 200X, the day on which your tenancy expires. If you fail to do so, the Landlord will commence summary proceedings to remove you from the Premises for holding over after the expiration of your term, and will demand the monetary value of your use and occupancy of the Premises during such holding over.

November 5, 200x
DatePaul Hogan
SignaturePaul Hogan, Managing Agent
Name and Title of Signerc/o Henry Street Realty
Address3000 Montague St,Brooklyn, NY 11201718-555-1212
Phone

b. Who Must Give the Termination Notice

State law permits the termination notice to be given by the landlord or his agent. That means that either the landlord, the landlord's managing agent or attorney may issue the notice. But some rental agreements require termination notices to be signed personally by the landlord, which means that the landlord must sign the notice. In such cases, a notice signed by the landlord's agent or attorney is acceptable only if accompanied by proof of the signer's authority to bind the landlord, such as a signed and dated statement from the landlord that provides this authority. (*Siegel v. Kentucky Fried Chicken of Long Island, Inc.*, 108 A.D.2d 218, 488 N.Y.S.2d 744 (2d Dep't 1985) aff'd 67 N.Y.2d 792, 492 N.E.2d, 501 N.Y.S.2d 317 (1986).)

Similarly, if a rental agreement specifies that only the manager or the landlord's attorney may issue the notice, the notice must come from the person authorized under the rental agreement to issue termination notices. The agreement may also require that person to sign the notice. Check your rental agreement for notice requirements that may apply to your tenancy.

c. How the Notice Must Be Served

Termination notices in New York City may be delivered (or served, to use the legal term) by any one of the following three methods:

- personal delivery to you
- “substituted service” to a person of suitable age and discretion who lives or works in your rental unit, with a copy of the notice mailed to you by regular and certified mail, or
- affixed to a conspicuous part of the premises (known as “nail and mail” service), with a copy of the notice mailed to you by regular and certified mail. (CPLR § 2103-a.)

The mechanics of each method of service are detailed in Chapter 15, Section H.

Anyone over the age of 18 may serve you with the termination notice, except for the property's owner or landlord. (RPL § 735.) Each tenant named on the notice must be served with his or her own copy of the termination notice. So, for example, if the notice identifies the tenants as “John and Mary Pagano,” both John and Mary must each be served with the notice, even if they're married to each other.

2. How Landlords Outside New York City May End a Tenancy

If you live outside New York City, your landlord is required to give you at least *one month's* notice of termination. (RPL § 232-b.) The notice can be short and sweet. It must state a clear and definite termination date, but needn't give a reason for termination or warn you of the consequences of failing to move out. The landlord's notice may be oral or in writing.

Unless your rental agreement states otherwise, the termination notice may be issued by the landlord or the landlord's agent, such as his manager or attorney. If the notice is written, it may be hand-delivered or mailed to you. Regular mail is acceptable. Anyone over 18, including the landlord, can deliver or mail the notice to you.

If your rental agreement requires termination notices to be in writing, your landlord must follow the terms of the rental agreement and give written notice in the exact manner stated therein. If the landlord doesn't follow the notice procedure set out in your rental agreement, technically the notice is invalid and you could fight it in court, as discussed below.

3. When Landlord May End a Tenancy on Little or No Notice

A landlord may end your month-to-month tenancy for any reason, or no reason at all, so long as the applicable termination procedures (described above in Sections 1 and 2) are followed. But there are two situations that permit landlords to begin eviction proceedings on as few as three days' notice to the tenant.

a. Nonpayment of Rent

If you don't pay your rent on time, your landlord may issue a “rent demand” requiring you to pay the rent you owe or move out. Under New York law, the rent demand can require you to pay or leave in as few as three days (unless your landlord has agreed to a longer period). If you can't come up with all of the rent within the allotted time, the landlord may immediately file a nonpayment eviction proceeding against you in court. Chapter 15 discusses how to respond to rent demands and nonpayment eviction proceedings.

b. Illegal or Immoral Activity

A landlord may begin eviction proceedings without any prior notice against tenants who use their units for illegal gambling, prostitution, narcotics manufacture, narcotics sales or other illegal or immoral activities. Chapter 16, Section D, discusses this termination ground in detail and explains the holdover eviction proceeding procedure.

C. Your Options After Getting Notice of Termination

If you've gotten a termination notice from your landlord, you basically have three options: Go to court, negotiate for more time or move out. Here's an overview of the key issues. See Chapter 16 for more details.

1. Fight the Termination in Court

If you don't move out by the termination date set by your landlord, you can expect to be served with legal papers (a notice of petition and a petition holdover) which begin an eviction proceeding against you. While month-to-month tenants don't have many weapons in their legal arsenal to defend an eviction proceeding, here are a few arguments that may apply to your situation and could help you avoid or forestall an immediate eviction. Chapter 16 explains in detail how to answer a holdover petition and your legal options if you elect to appear in court and fight for your tenancy.

- **Failure to provide prior notice of termination.** Some landlords don't know that tenants must get notice of termination before they can be evicted. If you didn't get any notice that your landlord was terminating your tenancy (until you were served with eviction papers—the notice of petition and petition holdover), your case should be dismissed.
- **Improper termination notice.** Many judges will dismiss eviction proceedings if they find that the termination notice is vague, given by the wrong person or doesn't provide enough notice. (To gauge the legal sufficiency of the notice you received, read Section B, above.)
- **Improper service (New York City only).** In order to evict you, the landlord must prove that the termination notice was properly served upon

you. Read section B1, above, to see whether you have grounds to claim that the notice was improperly served.

- **Improper service of the notice of petition and petition holdover.** Your landlord must prove that these legal papers were properly served, too. Chapter 15, Section H, details the manner in which eviction papers must be served upon you.
- **Rent-controlled tenancy.** Rent-controlled tenants may be evicted only for violating the terms of their tenancy, or for one of the special reasons detailed in Chapter 16.
- **Retaliation.** Your tenancy may not be ended in retaliation for a legally protected activity connected to your tenancy, such as complaining to a building inspector that a rental unit is uninhabitable or forming a tenant association. Chapter 11 explains New York's anti-retaliation statute and Chapter 16 explains how to raise retaliation as a defense in court.
- **Discrimination.** It is illegal for a landlord to terminate a tenancy based upon the tenant's race, ethnicity, religion or other discriminatory ground. Chapter 11 discusses illegal discrimination and what steps you can take to fight back.

Telling the judge that you have no money to move or no alternate housing generally won't work. While some New York City judges tend to be sympathetic to tenants who are down on their luck, and sometimes give them more time to find a new apartment, judges in other parts of the state tend to apply the law without regard for the personal circumstances of the tenant.

2. Negotiate With Your Landlord

The problem with fighting a termination notice in court is that even if you win, you're merely postponing your inevitable eviction since, sooner or later, your landlord will get it right. (The main exception applies to rent-controlled tenants.) So instead of going to court, you may wish to negotiate with your landlord for permission to stay in the rental unit for a longer time period.

Say, for instance, that your super delivers a termination notice to you on March 3rd. The notice, which is signed by the landlord, purports to terminate your tenancy on March 30. Since you're getting only 27 days' notice of termination, the notice is legally

insufficient. Instead of ignoring the notice and then going to court to fight it, you may want to call or meet with your landlord to arrange a mutually beneficial move out date, say, on April 30th. That way, you and your landlord can avoid going to court. If your landlord says no and later serves you with eviction papers, you can still fight the eviction in court.

Even if the termination notice is proper, you can still talk to your landlord about extending the termination date. She may agree to let you stay longer in exchange for your firm promise to leave and pay rent through a specific date, especially if it's clear you'll have a place to go and the resources to move soon, given a little more time. Or, if your landlord has terminated your tenancy over your raucous Friday night parties, he may be inclined to let you stay longer if you promise to keep things low-key and party elsewhere.

If your landlord refuses, however, think carefully about whether you really want to go to court with

no real defense. This can end up being a foolish decision. You can't expect a judge to dismiss or forestall your eviction out of sympathy or pity. When the landlord gives a proper termination notice to a month-to-month tenant, the landlord usually wins the eviction proceeding.

3. Move Out

If the landlord's termination notice was proper and you can't negotiate a longer notice period, you really have no alternative but to move out. If you stay, you'll eventually be evicted and risk being hit with a money judgment for your landlord's legal bills related to the eviction and a stain on your credit report.

If you have no money and no place to go, a public assistance lawyer may be able to help you. Chapter 19 explains how you can find one in your area. In addition, Appendix A lists social service agencies that may be able to help you secure affordable housing in your area. ■



Dealing With Rent Demands and Nonpayment Eviction Papers

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When it comes to late rent, landlords have no sense of humor. That's because prompt rent collection is essential to a rental property's cash flow. Tenants who pay rent late make it tougher for landlords to make scheduled mortgage payments and pay regular bills, such as employee paychecks, utilities and insurance. If you fall behind with your rent, you can count on your landlord to quickly respond with a "rent demand" directing you to pay up by a certain date or move out. If you don't remit the rent within the time demanded, usually three days, you can also count on getting served with eviction papers (officially known as a "notice of petition" and "petition nonpayment"), notifying you that your landlord has started an eviction proceeding in court.

If you have simply forgotten to pay rent, dealing with a rent demand from your landlord is easy. You just pay up. But things get far more complicated if you've stopped paying rent for a good reason, such as defective or uninhabitable conditions in your apartment, or because you're experiencing financial difficulties. This chapter explains the ins and outs of rent demands and defending an eviction for nonpayment of rent. Chapter 16 discusses your legal options when faced with termination notices and holdover eviction papers for violating a lease term or for reasons other than nonpayment of rent.

This chapter covers the three basic notices involved in rent disputes—the rent demand, the notice of petition/petition nonpayment and the notice of eviction—and the legal requirements and consequences of each type of notice. To help with identification, we've included sample forms that you can compare to the form you've received. Once you've figured out whether your landlord may legally terminate your tenancy, it's time to examine your legal options. If you elect to appear in court and fight for your tenancy, you'll need to understand how eviction proceedings operate and what you need to do to persuade a judge that your landlord's case is bogus or simply wrong. This chapter explains the eviction process and how to file an answer responding to the landlord's claims. Settlement stipulations—written agreements between you and your landlord that end an eviction proceeding without a trial—are also discussed.



Your landlord may not use "self-help" to evict you. Landlords must follow specific court procedures and may not threaten or forcibly evict you or

simply throw your belongings on the street. Only marshals, sheriffs and other designated law enforcement agents may carry out court-ordered evictions—after the landlord has brought a nonpayment eviction proceeding and obtained a judgment of possession and warrant directing the sheriff or marshal to evict you. A judge will not sign an eviction order unless and until your landlord has established that you received an adequate and timely demand for the rent, that rent is legally due and that you have no legal justification for withholding rent. Chapter 11, Section C, discusses landlord harassment and NYC's Unlawful Evictions Law, which imposes civil and criminal penalties against landlords, managers and supers who use or threaten force, discontinue services or lock out tenants and occupants.



Related topics covered in this book include:

- Default and termination provisions and notice requirements in leases: Chapter 2
- Basic rules governing how much rent landlords can charge, and where, how and when rent is due: Chapter 3
- Understanding rent control and rent stabilization laws, including what units are covered rules on rent increases and overcharge proceedings: Chapter 4
- A tenant's right to withhold or pay less rent for unsafe or unlivable conditions: Chapter 9
- Fighting landlord discrimination, retaliation and harassment: Chapter 11
- Demanding rent from your subtenant: Chapter 12
- Responding to termination notices ending a month-to-month tenancy: Chapter 14
- Responding to termination notices and holdover eviction papers: Chapter 16
- Getting your security deposit back and deductions for unpaid rent: Chapter 18
- Finding a lawyer and conducting your own legal research: Chapter 19.



Model Letters and Sample Forms Included in This Chapter

- Three-Day Rent Demand Notice
- Notice of Petition
- NYC Pro Se Answer
- Answer With Counterclaims and Jury Demand
- Affidavit of Service
- Stipulation of Settlement Nonpayment Proceeding

Learning the Lingo: A Glossary of Rent Demand, Termination and Eviction Terms

Throughout this chapter, we refer to various legal notices, eviction forms and legal phrases that relate to rent demands and nonpayment eviction proceedings. Chapter 16 includes many of the same terms, plus refers to various notices, forms and legal phrases that relate to terminations and holdover eviction proceedings. If you come across a term you don't understand in this chapter (or in Chapter 16), refer back to this glossary for help.

Affidavit. A written statement of facts made under oath. For example, an affidavit of service is a sworn statement made by a person who has delivered or mailed legal papers to someone else, stating how, when and where the papers were delivered or mailed.

Affirmative defense. A good legal reason asserted by a tenant to excuse what would otherwise be grounds for eviction. For example, dangerous or unsafe conditions in the tenant's rental unit or at the property that breach the warranty of habitability is a common affirmative defense in a nonpayment proceeding. Also, the acceptance of rent by the landlord after termination of the tenancy is a common affirmative defense in a holdover proceeding (discussed in Chapter 16).

Answer (holdover eviction). A tenant's oral or written response to the landlord's initial court filing called a petition. An answer often both denies allegations made by the landlord in the petition and asserts affirmative defenses and counterclaims.

Answer (nonpayment eviction). An answer is your (the tenant's) response to the claims in the landlord's petition and contains your defense or legal excuse for not paying rent, along with any claim you might have against the landlord for money damages.

Breach. A failure to comply with the terms of a lease, stipulation or other contract. For example, your landlord might say you breached your lease by failing to pay your rent on time (nonpayment eviction) or by keeping a pet in violation of a no-pets clause (holdover eviction).

Burden of proof. The obligation of the landlord or tenant to establish the existence of one or more facts (through evidence such as documents or witness testimony) to sustain an eviction or

support a defense. In a nonpayment proceeding, your landlord has the burden to prove that you owed rent but didn't pay it.

Counterclaim. A tenant's legal claim against the landlord for money damages or other relief, which must be raised as part of the answer. A claim for attorney fees is a common counterclaim when the tenant's lease or rental agreement authorizes it.

Cure. A term used in holdover eviction proceedings, this is conduct taken by the tenant to remedy a violation of the lease or rental agreement. For example, a tenant may cure a sublet violation by removing the subtenant from the premises.

Default. A failure to do what is required by law or agreement, such as a tenant's failure to live up to a promise made in a stipulation of settlement. (See also, "Breach.")

Default judgment. A judicial order awarding legal possession of the premises to the landlord, based on the tenant's failure to go to court to answer the petition, and permitting the tenant to be evicted.

DHCR Certificate of Eviction. An order issued by DHCR to the landlord which permits the landlord to proceed in court to evict a rent-regulated tenant. The landlord need not obtain this certificate before every eviction proceeding against a rent-regulated tenant, just in certain holdover eviction proceedings—for example, to recover a unit for owner occupancy from a rent-controlled tenant or a State (ETPA) rent-stabilized tenant.

Dismissal. A judicial order disposing of the eviction proceeding without a trial. This may happen in a nonpayment proceeding if the landlord fails to demand rent before starting the eviction proceeding, or fails to follow an essential step when serving the eviction papers to the tenant. A holdover eviction proceeding may be dismissed if the landlord fails to prove she had a valid reason for terminating the tenancy. If the dismissal is "with prejudice," the landlord may not start the case anew. If the dismissal is "without prejudice," the landlord may start all over again with a new rent demand or with a new eviction proceeding against the tenant on the same grounds.

Learning the Lingo: A Glossary of Rent Demand, Termination and Eviction Terms (cont'd)

Execution of the warrant of eviction. When a marshal, sheriff or other law enforcement officer restores the landlord to possession of the rental unit by removing the tenant and/or the tenant's belongings from the rental unit and changing the locks.

Final judgment. A judicial order resolving the factual claims in dispute and determining the legal rights and obligations of the landlord and tenant. A tenant may consent to a final judgment in favor of the landlord in a settlement stipulation, in exchange for more time to pay rent or move out (nonpayment eviction) or more time to move out, rent forgiveness, or cash (holdover eviction). A final judgment may be issued on default (see "Default judgment").

Index number. Number assigned by the court clerk's office to identify an eviction proceeding when the case is opened. That same index number should appear on the front page of all documents subsequently filed in the proceeding.

Interpose. To raise a claim, defense or counterclaim against the landlord or tenant in an eviction proceeding.

Jurisdiction. The power and authority of a given court to hear and decide a given case against a given person. The term sometimes refers to the geographic area where the court may hear cases.

Marshal. A law officer who is empowered to enforce eviction warrants, money judgments and other judicial orders.

Motion. A request to the court for an order or ruling directing some action made before, during or after trial—for example, a pre-answer motion to dismiss the proceeding. Some motions are made orally, others in writing.

Notice of Eviction. A notice issued by a marshal, sheriff or other law enforcement officer warning the tenant that an eviction warrant has been issued and that the tenant will be evicted from the premises in as little as 72-hour hours. Also known as a "72-hour notice."

Notice of Non-Renewal. A notice issued by a landlord to a rent-stabilized tenant in a holdover eviction proceeding advising that the tenant's lease will not be renewed at the expiration of the

lease term, and stating the legal basis for non-renewal under the applicable rent regulations.

Notice of Petition. A legal notice, issued by a judge, court clerk or attorney, which advises the tenant that the landlord has commenced (started) a legal proceeding to evict him or her from the premises, and informs the tenant how, when and where to answer the petition. The content and form of the notice of petition are different for nonpayment and holdover proceedings.

Notice of Termination. A notice issued by a landlord that notifies the tenant that the tenancy will be terminated as of a certain date. The notice may also warn that the landlord will begin holdover eviction proceedings if the tenant fails to vacate the premises on or before the termination date.

Notice to Cure. A notice issued by a landlord which advises the tenant of the need to correct or cure a specified violation of the lease, rental agreement, law or tenancy within a certain time period, or face termination. This is also known as a default notice and is the required first step to terminate a tenancy for violation of a lease or rental agreement clause.

Order to Show Cause. A legal notice advising the recipient that the court will hear a tenant or landlord's request for some sort of immediate relief, such as the postponement of an eviction.

Party. A person or entity, such as a corporation, that either brings the eviction proceeding (called the petitioner), or that defends against a lawsuit (called the respondent).

Petition Holdover. A request from the landlord in a holdover eviction proceeding for a judgment of possession of the premises and the removal of the tenant in occupancy. The petition must identify the landlord, the tenant, the premises, and the facts upon which the proceeding is based. It must also state the relief sought (possession of the premises) and may include a request for a money judgment for rent due, or if the tenancy has ended, the fair value of the tenant's use and occupancy of the premises and attorney fees.

Petition Nonpayment. A sworn statement from the landlord in a nonpayment eviction proceeding

Learning the Lingo: A Glossary of Rent Demand, Termination and Eviction Terms (cont'd)

stating that the tenant failed to pay rent due under a lease or rental agreement and that the landlord demanded rent from the tenant before the proceeding was started. The petition requests a court judgment awarding legal possession of the rental unit to the landlord, a warrant of eviction directing a law enforcement officer to remove the tenant from the premises and a money judgment for unpaid rent, additional rent, interest and court costs. The petition may also demand attorney fees. The petition is attached to the notice of petition.

Petitioner. The person or entity who initiates the eviction proceeding, usually the owner or landlord of the premises sought to be recovered.

Premises. Also, "subject premises" or "premises sought to be recovered," this is the rental unit occupied by the tenant that is the focus of the eviction proceeding.

Pro se. Someone who represents him or herself in court without a lawyer.

Process server. A person who is legally authorized to serve (deliver) legal papers to a landlord or tenant.

Proof of Service. A sworn statement that states how, when and where a notice or pleading was delivered to a specific person, and by whom. This is also known as an affidavit of service.

Release. The abandonment of past and future claims against the other party—for example, the landlord—often in exchange for a mutual release. At the end of a tenancy, a landlord and tenant sometimes agree to release each other from all future claims arising from the tenancy.

Rent demand. An oral or written demand for unpaid rent issued to the tenant by the landlord or an authorized agent. It is a legal warning that demands that you either pay a specified sum of rent within a definite time period, or move out. The minimum time period to pay or leave is three days, unless the lease or rental agreement provides for more time.

Respondent. The tenant, subtenant or occupant who resides in the premises sought to be recovered in an eviction proceeding.

Service. The delivery of a legal document to a person who is thereby officially notified of the contents

of the paper delivered. New York laws and rent regulations specifically describe the manner in which a notice must be delivered. Section G describes the manner in which a notice of petition and petition must be served upon a tenant in both nonpayment and holdover eviction proceedings.

Stay. A suspension of the entire case or some part of it, such as the execution of the warrant of eviction, for a specified time period or until the occurrence of a specified event.

Stipulation of Settlement. A legal agreement between a landlord and tenant to end an eviction proceeding under certain terms and conditions.

"Tenant to Vacate." A term inserted in stipulations which obligates the tenant to surrender legal possession of the premises and move out, usually by a specific date.

Trial. A judicial examination and determination of any factual issues in dispute between the landlord and tenant before a jury, or a judge alone.

Use and Occupancy. The money payable by a tenant during his continued occupancy of the premises after his tenancy has ended or been terminated.

Vacate. To cancel a judicial order or stipulation of settlement.

Waive. To knowingly give up a legal right.

Warrant of Eviction. A court order directing a marshal, sheriff or other enforcement officer to remove the tenant from the premises and restore the landlord to legal possession of the apartment.

"Warrant to Issue Forthwith." A term found in a final judgment or stipulation of settlement that permits the immediate issuance of an eviction warrant against the tenant. The judgment or stipulation may further provide for a "stay" or postponement of an eviction to give the tenant more time to pay the rent that is due or more time to move out (in a nonpayment eviction proceeding); in a holdover eviction proceeding, the judgment or stipulation may give the tenant more time to cure a violation of the lease or rental agreement, or more time to move out.

Warranty of Habitability. A landlord promise, inferred by law, that the premises a tenant rents are free of unsafe and unhealthy conditions and are suitable for living purposes.

A. The Rent Demand

A rent demand is exactly what it sounds like. It's a demand from the landlord to pay the rent within a certain time period (usually three days) or move out. If you don't pay up or move out within the time provided, the landlord may begin a nonpayment eviction proceeding against you. New York landlords may demand rent either orally or by written notice (RPAPL § 711(2)) and must follow specific service requirements.

The general rule is that a written rent demand may come from the landlord, her manager or attorney. If you have a lease or rental agreement and it requires that notices come from the landlord "personally," then only the landlord can issue the notice. The landlord can always authorize someone else to issue notices on her behalf, as long as you receive proof of that person's authority to bind the landlord. A signed statement from the landlord that's attached to the notice is sufficient.



Under the Federal Debt Collection Practices Act, ("FDCPA") written rent demands signed by attorneys who regularly collect rent debts violate federal law unless they afford you 30 days' notice (rather than the minimum three days required under New York law).

(FDCPA, 15 U.S.C.A. §§ 1692 *et seq.*; *Romea v. Heiberger & Associates*, 988 F.Supp 712 (S.D. N.Y.1997) *aff'd* 163 F.3d 111 (2d Cir.1998).) If you received a rent demand notice from a lawyer that gives you less than 30 days to pay the rent or move out, you may be able to seek damages against the lawyer under the FDCPA. A notice issued by a lawyer that provides less than 30 days' notice is nevertheless valid. If you do not pay the rent demanded or move out within the time provided, the landlord may still commence a nonpayment eviction proceeding against you, based on the rent demand. New York courts may not dismiss a nonpayment proceeding on the ground that the rent demand notice was signed by a lawyer and violates the FDCPA. (*Dearie v. Hunter*, 183 Misc.2d 336, 705 N.Y.S.2d 519 (App.Term, 1st Dep't 2000).)

1. Your Right to a Rent Demand Is Sacred

Some landlords add clauses in their leases and rental agreements which purport to eliminate the legal requirement of a rent demand, or to "waive" your

statutory right to receive prior notice of a rent default. These clauses are unenforceable. (*PAK Realty Associates v. RE/MAX Universal, Inc.* 157 Misc.2d 985, 599 N.Y.S.2d 399 (Civ. Ct., N.Y. County, 1993).) Also unenforceable are clauses that call for *automatic* termination of the agreement for nonpayment of rent. (*Park Summit Realty Corp. v. Frank*, 56 N.Y.2d 1025, 453 N.Y.S.2d 643, 439 N.E.2d 358 (1982).)

No matter what your lease or rental agreement says, your landlord must be able to prove that you received a rent demand before the start of an eviction proceeding. If a judge finds that the landlord failed to make a rent demand, or made it improperly, the eviction case must be dismissed. (RPAPL § 711.)

2. There's No Grace Period for Rent Payment

A landlord may make an oral or written demand for rent on any day after the date rent is due. So if your rent is due on the first of the month, your landlord can demand the rent on the second of the month. It's a myth that landlords are required to give tenants a grace period of a few extra days. That said, there is one exception. If the due date falls on a Saturday, Sunday or legal holiday, the due date is extended to the next business day. (GCL § 25(1).) The landlord can't make a rent demand until the day after that.

EXAMPLE: Ronnie's lease says that rent is due on the first day of each month. Since the first day of the month in January is a legal holiday, New Year's Day, the due date for rent gets extended to the next business day. If January 1 falls on a Friday, Ronnie's rent is not due until Monday, January 4. That makes Tuesday, January 5, the earliest date that Ronnie's landlord can demand January rent.



Making a rent demand on a Sunday is prohibited.

(GBL § 11.) Under New York law, the service of any legal process on a Sunday, including a rent demand, is void. The rationale is secular, not religious. The legislature has deemed Sunday a "day of rest" for the general public. If you are served with a rent demand on a Sunday, and later end up in court defending a nonpayment proceeding, point out Sunday service of the notice to the judge or court clerk. Your case may be dismissed.

3. Written Rent Demands: The Three-Day Notice

A rent demand notice has important legal consequences. So it's important to be able to distinguish a rent demand notice from other notices you might get from your landlord or from other creditors. There's no special way a rent demand notice must look, but to be valid, a written rent demand must:

- Identify the premises for which rent is sought by giving the full address of your apartment or rental unit.
- Require you to either pay a specified amount of rent and "additional rent" (such as late fees or other charges permitted under the lease or rental agreement) or surrender possession of the premises. (RPAPL § 711(2).) A notice that fails to give this "pay or leave" option is invalid.
- Specify the time period for which the rent is due, such as the month of November, 2002, and
- Inform you that the landlord will begin a summary eviction proceeding if you fail to pay or leave within three days (or within a longer time period, if required by your lease or rental agreement). The written demand need not specify an actual due date. It will be valid if it simply says that you must pay or leave "three days from the date of service of this notice upon you."

To help you recognize a rent demand, we've printed a sample Three-Day Rent Demand Notice below. The rent demand form your landlord uses may look a little different or contain other words, but more or less, they all say the same thing.

A written rent demand is sometimes referred to as a three-day notice. That's because legally, a landlord making a written rent demand must give you at least three days' notice to pay the rent before starting a nonpayment eviction proceeding. (RPAPL § 711(2).)

EXAMPLE: Marcus, the landlord's agent, hands Tom a rent demand notice on Monday, July 5. Tom has three days, until Thursday, July 8, to either pay up or move out. If Tom ignores the notice, the landlord can sign and deliver eviction papers to Tom as soon as Friday, July 9.

Three days is the *minimum* notice provided for by law. Your lease or rental agreement may require the landlord to give you more time—for example, at least five or ten days—to come up with the rent before starting a nonpayment eviction proceeding. Read your lease or rental agreement to find out how much time you're entitled to. (If you're not sure what to look for, read the section on default and termination clauses in Chapter 2.) The landlord must comply with the longer time period (if any) set out in your lease or rental agreement.

Landlords must follow specific rules on serving a written rent demand. Improper service of a rent demand may be grounds for dismissal of your eviction case. Section H, below, discusses rules such as how rent demands and other notices must be served.



Late rent fees are unaffected by rent demand time periods.

If your lease or rental agreement specifies late fees, they'll kick in as soon as your lease or rental agreement says they can. The number of days specified in your rent demand notice will not affect them. Chapter 3, Section E, discusses late rent charges.



Don't panic.

If you don't pay rent and remain in occupancy after the deadline in your rent demand notice passes, your landlord can't throw you out or change the locks. In New York, the landlord must begin an eviction lawsuit seeking possession of your apartment and an eviction order. A judge must order your eviction before a marshal or sheriff can physically evict you.

4. Oral Rent Demands

Rent demands don't need to be in writing. Your landlord can make an oral rent demand instead, unless your lease or rental agreement specifically requires a written rent demand. To be binding, an oral rent demand must satisfy the following three requirements:

1. The demand must be made by the landlord or an agent of the landlord, such as your building's manager.
2. The demand must be made directly to you or to one of your co-tenants either personally or over the phone. (*Salgro Realty v. Russell*, NYLJ, 4/16/90, p. 27, col. 1 (App. Term, 1st Dep't).)

A demand made to your guest, visitor or to a non-tenant occupant, such as your teenage daughter, won't work since they are not legally obligated to pay rent.

3. The demand must clearly inform you of both the amount of rent due and the specific time period for which rent is due, such as the month of April, 2003. (*Solack Estates Inc. v. Goodman*, 102 Misc.2d 504, 425 N.Y.S.2d 906, aff'd 78 A.D.2d 512, 432 N.Y.S.2d 3 (1st Dep't 1980).) The details are important. A demand for "all back rent" or "all rental arrears" is too indefinite to be valid.

Tenants with oral rental agreements are entitled to three days' notice, too, unless the landlord made an oral agreement with the tenant to give more notice.

The requirements for oral rent demands are less stringent than for written rent demands. Judges who hear nonpayment proceedings would prefer that landlords specify a due date when you must pay, and warn you that you could face eviction if you stay. But most judges won't dismiss a case merely because the landlord forgot to give you a due date or an eviction warning, as long as she remembered to specify the amount of rent due and the time period covered.

A phone call that goes something like this would probably be specific enough to be considered a valid rent demand: "Hello Mr. Abernathy, this is your landlord Susan Miller. You owe me \$3,216 in rent for January and February 2003. I would appreciate prompt payment."

B. Do You Need a Lawyer in a Rent Nonpayment or Holdover Eviction Proceeding?

Most landlords are represented by lawyers in nonpayment proceedings, as well as holdover eviction proceedings (discussed in Chapter 16). The best way to level the playing field is to have your own lawyer. But sometimes the cost of hiring an attorney can be prohibitive—even more than the amount of rent you owe the landlord (in a nonpayment proceeding). As a result, many tenants choose to go it alone and represent themselves in simple, nonpayment holdover eviction cases.

There are times, however, to seriously consider legal counsel:

- When your income level qualifies you for free legal representation. Many tenants who are eligible for community legal services don't apply for them. Chapter 19 explains how these services work and whom to call to see if you qualify.
- When your lease or rental agreement contains an attorney fees clause, the prevailing party in a nonpayment proceeding is entitled to an award of attorney fees from the losing party. (Chapter 2, Section B19, discusses attorney fee clauses.) If you have a "slam-dunk" case for withholding rent or remaining on as a tenant, knowing that you could recover most—if not all—of your legal fees from the landlord is a good reason for hiring an experienced lawyer.
- If there's a lot of rent in dispute, it may make economic sense to hire a lawyer, as a hedge against losing and paying it all to your landlord.
- If you are a rent-regulated tenant and have a clear rent overcharge case, a lawyer could help you win triple damages, if you can demonstrate that the overcharge was willful. If you have a rent-regulated tenancy in a holdover eviction proceeding, there's more at stake, so it may make economic sense to hire a lawyer as a hedge against losing the case and losing your apartment.
- If you have a long-term lease on a very desirable unit. In a holdover eviction proceeding, it doesn't make sense to hire an expensive lawyer to defend a tenancy that's three months from being over. But if your lease runs another year or so, and the apartment is desirable due to a below-market rent or a better than average layout or view, you should seriously consider hiring a lawyer. It may make sense to improve your odds of winning with a lawyer so you can hold on to the unit.
- If your case is legally or factually complicated, legal counsel may simply be a necessity to prove your defense or counterclaims. Defenses and counterclaims are discussed in Section J, below.

Chapter 19 explains how to find and work with a lawyer.

C. Calculating Your Deadline to Pay Rent or Leave

The amount of time you have to pay rent or move out depends on two variables: 1) the number of days notice your landlord gave you to pay rent or leave, and 2) the manner in which the landlord made the rent demand.

Rent demands usually give three days notice to pay or leave, since this is the statutory minimum notice period. However, some leases may require five or ten days notice instead. No matter how many days notice your lease provides, the clock starts to run as of the date your landlord serves the rent demand notice, or in the case of an oral rent demand, the date you talk to the landlord. The date of service is the date you're handed the notice, if the notice was served by personal delivery. If the notice was left with someone else at your home or taped on your door, the date of service is the date the landlord mailed copies of the rent demand notice to you. The clock starts to run on the postmarked date, not the date you actually received the mailed notices. Section H, below, details the manner in which written rent demands and other eviction notices must be served upon tenants.

Here's how to calculate the deadline for paying rent:

1. Figure out when you should begin counting:
 - If the rent demand was oral, start counting on the day after you received it.
 - If a written rent demand was handed to you (or dropped at your feet if you refused to take it), start counting on the day after you got it.
 - If a written rent demand was left with someone who lives or works in your rental unit, or was affixed to your front door, you should have also received copies of the rent demand in the mail (regular and certified). Look at the postmark on the two letters, and start counting on the later of the two postmark dates.
2. Count three days (or more if your lease or rental agreement gives you a longer notice period).
 - Don't add any days for the time the notice spends in the mail system.
 - If the third (or last) day falls on a Saturday, Sunday or legal holiday, ignore that day and move on to the next business day.

EXAMPLE 1: Your building's property manager serves you with a three-day notice on Wednesday. To count the three days, do not count Wednesday; begin with Thursday. This makes Saturday the third day. But Saturday is a weekend day and so is Sunday. So the third day is extended to Monday. Therefore, you have until the end of Monday to pay or leave. If your landlord files an eviction proceeding before Tuesday, you can ask the judge to throw it out.

EXAMPLE 2: You're served on Friday. Saturday is the first day, Sunday is the second day and Monday is the third day. Neither of the weekend days extends the three-day period. If you don't move out on Monday, the landlord may file an eviction lawsuit as soon as Tuesday (the fourth day).

D. Must the Landlord Accept Your Rent After the Demand Expires?

If you offer to pay the full amount of unpaid rent *at any time* after the rent demand is issued, your landlord must accept it, even if you offer to pay after the deadline for payment has expired. New York law permits tenants to pay back rent and preserve their tenancy at any time—right up to the moment the judge signs an eviction order. (RPAPL § 751(1).) If the landlord refuses to take it, you may deposit the rent with the court.



Paying later may mean paying more. While you can avoid eviction by paying rent *after* a non-payment eviction proceeding has begun, by then the landlord will have incurred legal fees and court costs. Depending on the terms of your lease or rental agreement, you could be held legally liable for these expenses as well and end up owing far more than the rent originally demanded by the landlord. We discuss attorney fees clauses in Chapter 2, Section B.

Payment for unpaid rent may be made in any form specified in the lease or rental agreement, such as cash, certified check, money order or personal check. If there's no written rental agreement, payment may be made in any form that your landlord has routinely accepted from you in the past.

The landlord is not required to accept less than the full amount of rent due, however. That's because

acceptance of a partial payment of the rent demanded cancels the legal effect of the rent demand. Nevertheless, some landlords will accept partial payments. But beware. The landlord can pocket your partial payment and immediately issue a new rent demand directing you to pay the new balance or leave.

To protect yourself from a landlord who agrees orally to partial rent then, turns around and issues a new rent demand, get your agreement in writing. Chapter 3, Section G, explains how to draft an agreement to pay rent in two or more installments.

EXAMPLE: Danny's rent of \$1,200 was due on the first of the month. Danny didn't pay January's rent and didn't have enough for February, either. On February 2, Ali, the manager for Danny's landlord, gave Danny a three-day notice to pay \$2,400 or leave. Danny paid \$1,200 on February 3 and thought that he'd saved his tenancy. He was amazed when, later that day, Ali handed him a new notice to pay \$1,200 or leave. Ali promptly served eviction papers on February 7 when Danny failed to pay.

If your landlord refuses to accept the rent (or insists on more money than was specified in the rent demand) and brings a nonpayment eviction proceeding anyway, you can answer the petition with the defense that the landlord refused to accept the rent. (Section J, below, explains how to file an answer.) Alternatively, if you rent in New York City, you may ask the court clerk if you can deposit the rent with the court, as explained in Section K, below.

If the lease or rental agreement contains an attorney fees clause, you can include a counterclaim in your answer seeking legal fees and court costs from the landlord in connection with defending a needless proceeding against you. (Section J, below, discusses counterclaims.)



Non-regulated tenants who make it a habit to pay rent late risk termination and non-renewal.

While New York law permits tenants to pay rent late without losing their tenancy, landlords can always terminate a month-to-month tenant who is chronically late. All that's required is a 30-day termination notice (or a one-month notice outside New York City). The landlord doesn't have to give or prove a reason for termination. See Chapter 14 for details on the procedure to terminate month-to-month tenants. If you've got a

lease, you have a little more security, since it's tough for landlords to terminate fixed-term tenants for chronic late payment. But once the lease ends, the landlord can refuse to offer a renewal lease. Only rent-stabilized tenants have an automatic right to a renewal lease. Chapter 4 explains renewal rights for rent-stabilized tenants.

E. Evaluating Your Legal Options

If you receive a rent demand or eviction papers, your response will depend on if and how long you would like to stay and whether you have a good justification for not paying rent. (Eviction papers, consisting of a notice of petition and petition, are discussed in detail in Section G, below.) You'll also want to consider the big picture: the time, trouble and stamina it will take you to fight an eviction, and the possible effect a lawsuit may have on your credit rating and chances for future rentals.

1. Negotiate With the Landlord

If you don't want to move, negotiation should be your first response—especially if you're clearly justified for not paying rent for one of the reasons discussed below, or if the landlord has mistakenly sent you a rent demand.

EXAMPLE: Ellen has been a rent-stabilized tenant at her Brooklyn building since 1995. In 1998, her landlord replaced all the windows in the buildings. Unlike the old windows, the new ones lacked built-in screens. Ellen filed an application with DHCR for a rent reduction based on decreased services in her apartment. The DHCR agreed with Ellen and issued an order reducing her rent to its 1997 level. In 2003, the building was sold. Her new landlord raised the rent to the 2003 level, and when Ellen refused to pay, served her with a rent demand and eviction papers.

Too busy to appear in court, Ellen decided to try to negotiate the dispute with Paul, the new landlord. Once Ellen showed Paul the DHCR rent reduction order, he voluntarily withdrew the proceeding and lowered Ellen's rent back to the 1997 level. The following month, Paul supplied the screens and applied to DHCR for a rent restoration order.



It's easy for landlords to mistakenly overcharge you. Computing rent increases for regulated apartments is tricky, even for the most seasoned landlord. Nevertheless, try to negotiate before going to court. Bolster your position with a copy of your apartment's rent history from the New York State Division of Housing and Community Renewal (DHCR). Chapter 4 explains how to get this information. Landlords who rectify rent overcharges themselves avoid potential liability and rent overcharge penalties, which may be imposed by courts and the DHCR.

Set up an appointment to talk with your landlord—ideally in person. Don't be shy about negotiating. After all, from your landlord's point of view, striking a deal makes far more sense than going to court. Lawsuits are time-consuming, expensive and filled with technicalities—a lot less attractive, business-wise, than negotiating a firm settlement that the landlord believes you will live up to.

It goes without saying that a landlord who perceives you as an inveterate troublemaker is unlikely to want to bargain—particularly if you have a history of paying rent late. And of course, some landlords are so unapproachable or irrational that meeting on a one-to-one basis is sure to be fruitless. If so, you'll have to consider going to court in an attempt to preserve your tenancy—assuming you have a good defense.



Negotiation is tougher for rent-regulated tenants. Most rent-regulated tenants pay below-market rents. Since your landlord will be entitled to a hefty rent increase if you move out or if you get evicted, your landlord will be far less likely to want to hammer out a settlement that lets you stay.

If you have some of the rent, but not all of it, you'll find that negotiation is most likely to work under two conditions:

- you have generally been a stable, rule-abiding tenant who pays rent on time, and
- you only owe one or two months' rent and can get back on track in a matter of weeks.

Say you owe your landlord \$1,500 but only have \$750 on hand. You expect to have the cash you need within two weeks. Explain your situation and ask your landlord for an extra two weeks to catch up on rent. If the landlord is cynical, you might wish to offer proof that you'll be receiving the needed funds in time—say, from a tax refund, job bonus,

stock dividend or loan from a relative. If you are willing to move out, but simply need more time to pay, see if you can work something out rather than go to court.



If you persuade your landlord to give you more time to pay, prepare a written agreement confirming the arrangement. Chapter 3, Section G, explains how to write up an agreement like this. That way, your landlord can't take your partial payment, turn around and immediately issue a rent demand for the balance of the rent due.

Negotiation is also a good bet if you haven't paid rent because the landlord has refused to make some minor repairs, such as repairing a broken kitchen drawer or replacing a torn screen, that don't justify rent withholding. If the landlord agrees to make the repairs, draw up a short agreement specifying the date that you will provide access, the work that will be done and, pending completion of the repairs, the date that you'll pay the rent that's due.

If the landlord refuses your offer to negotiate and serves you with eviction papers, you'll have another opportunity to pay the outstanding rent (and, usually, to settle) when the case goes to court (discussed in Section L, below).

2. Move Out

If you haven't paid the rent, don't have the funds (and don't qualify for any form of social assistance) and your landlord is unwilling to give you more time to pay, your cleanest course of action is to move out by the deadline set in the rent demand notice. Moving out in response to a rent demand shouldn't affect your credit rating. Only court judgments for rent or other debts get picked up on credit reports. You can expect your landlord to tap your security deposit for the unpaid rent, though, and possibly sue you in small claims court if you owe extra rent.

In a tight housing market, however, you may have no place else to go, even though you can't afford to pay your rent. In extreme circumstances like these, some tenants elect to stay in the apartment, even though they have no reason to expect that they would win an eviction proceeding. Though it's possible to buy time by staying in the apartment—for example, if there's a technical problem with the rent demand notice as described below—the land-

lord will eventually obtain an eviction order against you. If it comes to an eviction, this information will likely find its way onto your credit report, making it far harder to obtain rental housing, and perhaps other forms of credit, in the future.

Stopping an Eviction by Filing for Bankruptcy—A Drastic Step

If you are financially strapped and have lots of overdue bills, you may decide to declare bankruptcy. There are several kinds of bankruptcy. The most common are “Chapter 7,” in which most debts are wiped out after as many creditors as possible have been paid, or “Chapter 13,” in which the debts that remain are paid off over time according to a court-approved plan.

As soon as you file a bankruptcy petition—and whether or not the landlord knows about it—an automatic “stay” (court order) takes effect. It bars the landlord from terminating your tenancy or starting or continuing an eviction proceeding. This is true even if your lease or rental agreement says the landlord can immediately terminate your tenancy if you file for bankruptcy. (11 U.S.C. § 365(e).)

This means that if you have filed for either Chapter 7 or 13 bankruptcy and are behind in the rent, become unable to pay the rent or violate another term of your tenancy (such as keeping a pet in violation of a no pets clause), your landlord can’t start (or continue) an eviction proceeding against you.

Don’t jump to the conclusion, though, that filing for bankruptcy enables you to violate your lease or not pay the rent with impunity. At most, filing for bankruptcy buys you a little time. Your landlord may go to the federal bankruptcy court and ask the judge to lift the automatic stay. (11 U.S.C. § 362(a)(1), (2) & (3).) In most cases, the landlord gets the stay lifted within a matter of days and is allowed to continue with the eviction.

Don’t file for bankruptcy just to postpone an eviction. Even if you voluntarily withdraw your petition yourself before the case concludes, the fact that you have filed will remain on your credit record for ten years. Future landlords can legally turn you away when they learn of it, and it may cause problems with employers and would-be creditors, too. For less drastic solutions to financial difficulties, see [Money Troubles](#) by Robin Leonard (Nolo).

3. Refuse to Pay—And Go to Court

If negotiation isn’t feasible or doesn’t work, and you refuse to pay or leave, the landlord may start an eviction proceeding as discussed below. The most obvious reason to fight an eviction lawsuit for non-payment of rent is if you’re right and are prepared to take the time and risk of going to court to prove it. Here are the main situations when tenants refuse to pay and comply with a rent demand notice and are willing to go to court.

1. You are justified in withholding rent because your landlord has refused to respond to a serious repair or maintenance problem, after written notice. Read Chapter 9 to find out what types of conditions entitle you to withhold rent (we also provide a model notice to the landlord). Judges can give tenants generous rent reductions (legally known as abatements) for inhabitable conditions.
2. You are entitled to repair and deduct rent for the actual cost (assuming the amount is reasonable) to repair a significant defect the landlord knew about, but never got around to fixing. Chapter 9 also describes when and how to use the repair-and-deduct remedy.
3. Your apartment is rent-regulated and your landlord is charging more than the legal regulated rent and refuses to recognize this mistake. See Chapter 4 for an explanation of how rent increases are computed for regulated apartments.
4. You have paid the rent and your landlord is threatening you with a completely frivolous nonpayment eviction proceeding to get even with you for making a legitimate housing complaint to a government agency, for filing a lawsuit to enforce your rights or joining or organizing a tenants’ association. This is known as a “retaliatory eviction” and is explained in Chapter 11. A tenant may not assert retaliatory eviction as a defense for not paying rent. However, courts have allowed tenants to assert it as a “counterclaim” against the landlord for money damages, especially where the landlord has brought more than one frivolous nonpayment proceeding against the tenant in the past to harass and retaliate against the tenant. (See, for example, *601 West 160th Realty Group v. Henry*, 731 N.Y.S.2d 581 (App. Term, 2d Dep’t).)

Also, keep in mind that rent demands that are improperly made, contain mistakes or are delivered incorrectly may be attacked by tenants in eviction proceedings on purely technical grounds (discussed in Section J2, below). A judge can throw out a rent demand notice that omits the “pay or leave” directive, leaves out the time period for which rent is due or fails to warn that the landlord will evict if the notice is ignored. And judges often refuse to give landlords a chance to fix errors or omissions in the notice—they dismiss the eviction proceeding instead. If your proceeding is dismissed because of a defective rent demand, the landlord must start all over again by preparing and serving a new (and correct) rent demand notice.

The following section explains what to expect should you end up in court.



Military tenants have special rights. Under the Soldiers’ and Sailors’ Civil Relief Acts of 1940 (50 U.S.C. § 501 and following) and the New York State Soldiers’ and Sailors’ Relief Act (NY Mil. L. § 300 and following), a court may not enter a default judgment against a tenant in the military. In addition, persons who are dependent upon a military service member are protected from eviction. See “Military Tenants Have Special Rights,” below, for more information.

F. The Eviction Case: An Overview

Landlords may not use small claims court to evict a tenant. In New York City, eviction proceedings must be brought in the New York City Civil Court, in the county in which your rental unit is located. On Long Island, District Courts in Nassau County and the western part of Suffolk County hear eviction proceedings. Elsewhere, eviction proceedings may be heard in a Town or Village Justice Court or a City Court or a County Court, so long as the court’s geographical jurisdiction includes your locality. You shouldn’t have to travel to a neighboring village, town or county court to defend an eviction proceeding.

An eviction case is technically called a “summary proceeding.” It is designed to move very quickly. One very important rule cuts across all other rules in an eviction case. The landlord must strictly comply with all legal requirements, especially when it comes to preparing and serving eviction papers. This is the

price the landlord pays for a special, quick procedure and reflects the seriousness of the matter, which seeks to deprive you of your home.

An eviction proceeding is started when you are served with eviction papers, which consist of a notice of petition and petition nonpayment. New York City tenants have five days to go to the court clerk’s office and respond to the papers by way of an “answer.” When you answer, the clerk will give you a date for your first court hearing. Tenants outside New York City don’t need to go the clerk’s office first. They may answer on the first court date, which is listed on the notice of petition.

Your answer, which may be oral or written, explains why you haven’t paid rent and lists any claims you have for money damages against the landlord. If you don’t go to court to answer the eviction papers, the court can issue a “default” judgment against you and you can be evicted.

At the first hearing, you’ll get a chance to hammer out a settlement with your landlord, known as a stipulation of settlement. The settlement may give you more time to pay or give your landlord more time to make repairs. Most eviction cases end with a stipulation of settlement. If you can’t work out a settlement agreement with your landlord, the case will go to trial.

At trial, the landlord will be required to prove that you owe rent under a lease or rental agreement, and that you received a rent demand at least three days prior to getting served with eviction papers. Then it’s your turn to explain why you haven’t paid rent—for example, because you have serious repair problems in your unit. If your excuse has merit, the eviction case will be dismissed or you’ll be awarded a “rent abatement,” which means that the amount of unpaid rent you owe will be reduced. If you lose your case, the judge will issue a judgment for the landlord for unpaid rent, interest, court costs, and sometimes, the landlord’s attorney fees. If you don’t pay the full judgment within five days, the court can issue a warrant of eviction. A law enforcement officer can evict you from the rental unit with as little as 72 hours’ notice.

In the sections that follow, we explain what eviction papers say (Section G), how they must be served (Section H), how to answer the eviction papers (Sections I and J) and provide pointers on entering into stipulations of settlement (Section M).

Military Tenants Have Special Rights

Since the attacks on the World Trade Center, military service personnel who are currently active face the prospect of shipping out, making it difficult, if not impossible, for them to respond to rent demands or take care of legal responsibilities and debts. Reservists who are called up will leave family and jobs, and their ability to manage their affairs may be similarly curtailed. Fortunately, two powerful laws can help all active service persons handle their legal affairs and ensure that the homes and jobs left behind are waiting for them when they return. The Federal Soldiers' and Sailors' Civil Relief Act of 1940, or SSCRA (50 U.S.C. § 501 and following) and the New York State Soldiers' and Sailors' Relief Act (Mil. L. § 300 and following) apply to all active full-time personnel in the United States Army, Navy, Marine Corps, Air Force, Coast Guard, Army National Guard, Air National Guard, New York Naval Militia and New York Guard and certain members of the Public Health Service. These laws provide several benefits to tenants.

Termination of Leases and Rental Agreements.

Tenants who enter active military service after signing a lease or rental agreement have a right to get out of their rental obligations. We explain how military personnel may properly terminate a lease in Chapter 17, Section B.

Delaying Eviction for Nonpayment of Rent. The SSCRA requires courts to stay (postpone), for up to three months, some residential evictions for nonpayment of rent. The Act does not apply to evictions for other reasons, such as when the landlord terminates a rental agreement with a 30-day notice or you've kept pets in violation of the lease or failed to move when a lease is up. Chapter 16 discusses these "holdover" eviction proceedings.

While the Federal Act's protections apply only when the monthly rent is \$1,600 or less, New York State has eliminated this requirement. Mil. L. § 309(b) permits judges to apply the State Act's protections whenever the tenant's ability to pay the rent is materially affected by reason of military service, regardless of how much rent is charged for the rental unit.

A landlord who has filed an eviction lawsuit for nonpayment of rent must tell the court that the tenant is an active service person (so be sure to notify your landlord when you are activated). The judge will decide whether the service person's status in the

military materially affects his or her ability to pay the rent. If the judge decides that it does, the eviction case may be stayed for up to three months. If the judge decides otherwise, the lawsuit will continue and may result in an eviction.

The Secretary of Defense or the Secretary of Transportation may order that part of your pay be allotted to pay the rent, but only if your service branch has regulations in place providing for such allotments.

Protection from Default Judgments. The Federal Act also bars a court from entering a default judgment when a named tenant fails to appear, unless the landlord provides an affidavit setting forth facts showing that the tenant is not in military service. If the tenant is in the military, the court may not enter a judgment without first appointing an attorney to represent the tenant's interests. In addition, the court may require the landlord to post a bond to indemnify the tenant against any loss or damage suffered in the event the default judgment should later be set aside.

A default judgment against a military tenant may be vacated within 90 days after the tenant's military service ends, upon application made by the tenant or a legal representative, and a showing that the tenant has a good defense to the proceeding. Default judgments and various defenses to nonpayment proceedings are explained in the sections that follow.

Protection for Dependents. The SSCRA applies if your spouse, children or other dependents occupy the rental unit. Courts are very liberal when it comes to defining the term "dependent," giving it a broader meaning than the one used by the IRS. For example, a service person who supports in-laws who live with him may be able to protect them from eviction, even the service person does not claim the in-laws as dependents on his tax returns.

When you go to court to answer the petition, bring the military or dependent ID card, a copy of the service member's order, or telegram calling you or them to active duty. If you do not have these documents, you can contact the Fiscal Officer of the service member's unit or call these numbers for assistance: Army Emergency Relief: 718-630-4552 or 4710; Navy and Marines Emergency Relief: 718-876-6245 or 6246; Air Force Family Aid 609-724-3154; Reserve Civilian Job Rights: 800-336-4590.

Tenant Help Is Available in the NYC Housing Court

The New York City Housing Court, once known for its Byzantine procedures, has become a friendlier place for tenants who want help resolving disputes with their landlords. (Tenants outside New York should ask the court clerk about available court and community services for tenants facing eviction.) Here are some services to look for in NYC Housing Court:

- **Public Resource Center.** Counselors and written materials are available here to assist with your questions about filing an answer and what will happen in court.
- **Housing Court Information Tables.** The City-Wide Task Force on Housing Court, Inc., a private, nonprofit coalition, provides an information table at each borough courthouse on weekday mornings between 9 a.m. and noon. The staff and volunteers at the table answer questions, provide assistance and offer referrals to legal service providers and other organizations, resources and agencies that help tenants facing eviction. In partnership with the United Way, the Task Force also provides referrals to community organizations that provide financial assistance to tenants who owe back rent and have been sued by their landlord. The Task Force also operates a telephone hotline each weekday from 9 a.m. to 5 p.m. at 212-962-4795. (From Queens, call

718-657-0599.) Fact sheets on court procedures and evictions are available to read or download from the Task Force website (www.cwtfhc.org/index.html).

- **Interpreters.** Tenants who can not readily speak or understand English, or who are deaf or hearing-impaired, are entitled to have a qualified court interpreter appointed to assist them prepare an answer or appear at a hearing or trial.
- **Volunteer lawyers.** Volunteer lawyers are sometimes available to help pro se litigants with questions. Ask the court clerk how you can contact a volunteer lawyer about your case.
- **Childcare.** Some courts provide free childcare services (hours are limited) to tenants who must appear in court. Arriving early to drop off children assures you that you be on time for your hearing.
- **Mediation services.** Court-supervised mediation services are available in some boroughs. If you are interested in sitting down with a trained mediator in an attempt to resolve your case, ask the court attorney or judge at the first hearing of the proceeding if mediation services are available. The landlord must be amenable to mediation; a tenant can't force it. If you do try mediation and you can't reach a resolution, your case will get sent back to the judge.



G. Eviction Papers: The Notice of Petition and Petition Nonpayment

If you don't pay or leave in response to a rent demand, your landlord can serve you with eviction papers the very next day—even if you have a good reason for not paying rent. Eviction papers consist of a notice of petition and petition nonpayment.

We explain the content of the notice of petition and petition nonpayment in the sections below. Section H describes how the eviction papers must be served on you. Sections I and J discuss answering the petition.

1. Notice of Petition

At first glance, a notice of petition may seem like a lot of meaningless legalese, but it is actually a very important document. Translated into plain English, the notice informs you that:

- your landlord has started an eviction proceeding against you in court to remove you from your rental unit for the reasons given in the attached document, called the petition (short for petition nonpayment)
- your landlord has also asked the court for a money judgment for unpaid rent, additional rent and interest
- you must go to the courthouse at the address listed on the notice to answer the petition by explaining why you haven't paid rent and raising any money damage claims you may have against the landlord.
- in New York City, you have five days to file an answer with the court clerk and get a date for the first hearing of the eviction proceeding (we explain this procedure in Section I3, below)
- outside New York City, you must answer the petition at the first hearing of the eviction proceeding, or at least three days before the first hearing if the petition is served on you more than eight days before the first hearing and the notice so demands (we explain this procedure in Section I4 below)
- if you ignore the notice and don't go to court to answer the landlord's petition, a "default" judgment will be taken against you, meaning that you may be evicted in ten or more days, and
 - if you live in New York City and ask for more than two court adjournments (postponements), or the proceeding drags on for more than 30 days, the landlord can ask the court to direct you to deposit the disputed rent with the court (we explain how this works in Section K, below.)

Attached to the notice of petition is a sworn statement from the landlord, called a petition, which explains the legal and factual reasons why the landlord is seeking your eviction. (Section 2, below, discusses the petition or petition nonpayment.)

A sample Notice of Petition for a New York City nonpayment proceeding appears below.

For proceedings outside New York City, the notice looks similar but directs the tenant to answer the petition, orally or in writing, at the first hearing of the eviction proceeding. The date and place for the hearing is listed on the notice. If the notice of petition is served at least eight days before the date of the first proceeding, the notice may direct the tenant to answer the petition at least three days before the hearing, either orally, before the Court Clerk, or in writing, by delivering or mailing a copy of the written answer to the landlord (or landlord's attorney). In addition, notices for proceedings outside New York City omit the final paragraph about rent deposits, since the rent deposit law does not apply there.



Respond immediately to any eviction papers, post cards or notices that are delivered or mailed to you from your landlord, your landlord's attorney or a court. If you ignore these papers and do not go to court, a default judgment could be entered against you for failure to answer and you could be evicted. Some tenants make the mistake of waiting until they are handed a 72-hour notice of eviction before going to court. In the past, a judge could help tenants in these situations by stopping the eviction until the tenant's case was heard. State laws have since been toughened and judges have far less discretion to stop or postpone evictions. If you're served with a notice of petition and petition nonpayment, don't wait until you're served with a notice of eviction before going to court. It may be too late to rescue your tenancy, even if you have all the rent that's due. Unless you can show that your "default" (failure to respond to the notice of petition and petition) was excusable and that you have a meritorious defense to the proceeding, you'll be out of luck. We discuss defenses to nonpayment in Section I, below.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

123 Realty Company, Inc.,

Petitioner-Landlord

-against-

Jonathan Goldfarb and Melody Ching,
123 Delancey St, Apt. 3-A
New York, NY 10002

Tenants-Respondents.

NOTICE OF PETITION

Residential

Index No. (L&T) 76532/03

Petitioner's Business Address:

300 West 55th Street,
New York, NY 10019

To the Respondent(s) above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that the annexed Petition of 123 Realty Company, Inc., verified the 15th day of March, 200x, prays for a final judgment of eviction, awarding to the Petitioner possession of premises described as follows:

Apartment No.3-A on the third floor, consisting of 5 rooms, in premises known as and located at 123 Delancey Street, County of New York, in the City of New York.

TAKE NOTICE also that demand is made in the Petition for judgment against you for the sum of \$3,000.00 with interest from February 1, 200x.

TAKE NOTICE also that within FIVE (5) days after service of this Notice of Petition upon you, you must answer, either orally before the clerk of this Court at 111 Centre Street, County of New York, City and State of New York, or in writing by serving a copy thereof upon the undersigned attorney for the Petitioner, and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim you may have against the Petitioner. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than three (3) nor more than eight (8) days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for five (5) days from the date of such judgment.

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the Petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

In the event you fail to answer and appear, final judgment by default will be entered against you, but a warrant dispossessing you will not be issued until the tenth day following the date of the service of this Notice of Petition upon you.

TAKE NOTICE that under Section 745 of the Real Property Actions and Proceedings Law, you may be required by the Court to make a rent deposit, or a rent payment to the petitioner, upon your second request for an adjournment or if the proceeding is not settled or a final determination

has not been made by the court within 30 days of the first court appearance. Failure to comply with an initial rent deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on the issues raised in your answer.

Dated: March 16, 200x

City of New York, County of New York, the 17th day of March, 200x

Signed: **Clerk of the Civil Court of the City of New York**

Billings and Hurst, LLP
Attorneys for Petitioner
225 Broadway, Suite 705
New York, NY 10007
(212) 619-7676

2. Petition Nonpayment

Attached to the notice of petition is another document called a petition nonpayment (or petition). This is a sworn statement from the landlord that sets forth the facts and the legal grounds that support the landlord's request for your eviction.

Like the notice of petition, the petition is steeped in legalese. Stripped to its basics, the petition provides the following information:

- the name of the person or entity bringing the eviction proceeding (called the “petitioner”) and the petitioner's relationship to the rental unit—for instance, owner or landlord (or tenant, if you are subleasing the unit)
- your name (you're called the “respondent”) and your relationship to the rental unit (tenant, subtenant or occupant)
- the rental unit address, including any apartment designation
- a statement that you failed to pay rent (and additional rent) due under a lease or rental agreement, the amount owed and the time periods for which rent is due
- a statement that the landlord demanded rent prior to the start of the proceeding, including how the rent demand was made (orally or in writing)
- a request for a judgment granting possession of the rental unit to the landlord, an eviction warrant to remove you (and any other occupants) from possession and a money judgment for rent (and additional rent), interest, court costs and attorney fees, if they are authorized under the lease or rental agreement.

The petition must end with the landlord's “verification,” which is a signed statement that, to the best of the landlord's knowledge, the facts contained in the petition are true. If the landlord is a corporation, the verification may be signed by a corporate officer. If the landlord is a partnership, the verification may be signed by a partner.



In localities in which rent regulations are in effect, the petition must also state the rental unit's regulatory status. This lets the judge know which rent laws and regulations apply to your rental unit. Chapter 4 has a list of localities in which rent regulations are in effect and describes the rent limits and protections from eviction afforded rent-regulated tenants.



In New York City, the petition must also state whether the building is a multiple dwelling. If it is, the petition must further state that the property is currently registered as a multiple dwelling with the New York City Department of Code Enforcement. Chapter 9 discusses your landlord's repair and maintenance responsibilities under New York's Multiple Dwelling Law.

H. How Written Rent Demands, Nonpayment Petitions and Petitions in Holdover Eviction Proceedings Must Be Served to Be Effective

Rent demands and nonpayment petitions have important legal consequences. If a nonpayment proceeding could be brought against you without notice, you could get evicted from your home without ever having your day in court. To protect tenants from this harsh consequence, the law is strict about the manner in which landlords must deliver rent demands and nonpayment petitions. If the landlord fails to follow the rules on “proper service” of the rent demand or nonpayment petition, the eviction case can be dismissed. These same service rules apply to service of the notice of petition and petition in holdover eviction proceedings, as well as the warrant of eviction, discussed in Chapter 16.

Improper service of a written rent demand or of the notice of petition and petition is a defense to an eviction proceeding and should be raised in your answer as discussed in Section J, below. But how can you figure out whether the landlord followed all the rules of proper service? After reading this section, you'll be able to tell whether you were properly served (and whether you may raise the defense of improper service in your answer to the petition).



Examine the landlord's affidavits of service, when possible. An affidavit of service is a sworn statement made by the person who served a legal notice to you. The affidavit states whether the notice was delivered to you, to a person who lives or works at your apartment or affixed to your door. If the notice was handed to a person, it may also describe that person's physical characteristics—for example, “a woman with blonde hair and red glasses, approximately 5' tall, 120 pounds.” The affidavit also states whether copies of the

notice were mailed to you, when they were mailed and the type of mail service used.

If the landlord demanded the rent in writing, a copy of the rent demand notice, along with its affidavit of service, may be attached to the petition. The affidavit of service for the notice of petition and petition is on file at the clerk's office of the court listed on the notice of petition. You have the right to go to the clerk's office to examine it.

1. Who May Serve Notices

Anyone over the age of 18 may deliver a rent demand notice or notice of petition and petition (the papers that start a nonpayment eviction proceeding) to a tenant, so long as that person is not the landlord. (CPLR § 2103-a.) Agents, officers and employees of the landlord may serve rent demands.

Professional landlords usually hire process servers to deliver legal papers. A process server is someone who delivers legal papers for a living. Local ordinances in some municipalities, including New York City, require process servers to be licensed and to keep certain records with respect to their work.

2. Who Must Be Served

Each tenant listed on the legal notice must be individually served. The landlord is supposed to serve each tenant listed on a written lease or rental agreement. If you have a co-tenant, both you and your co-tenant must be served with a separate copy of the rent demand notice and with the notice of petition and petition. Husbands and wives who are both named in a lease or rental agreement must each be served separately, too.

Other occupants, such as your family members, need not be served with a rent demand. That is because they are not legally responsible to pay rent to the landlord. Only the tenants named on the lease or rental agreement are liable for rent.

However, if your landlord is commencing a nonpayment proceeding against you, it is possible that the notice of petition and petition will name your roommates or adult family members, or refer to them as "Jane Doe or "John Doe" if their actual identities are unknown to the landlord. In such cases, your roommate or other occupant may also be served with the notice of petition and petition nonpayment. This is done so that if you lose the eviction case, a

marshal or sheriff can evict everyone who lives in the rental unit—not just the people whose names are listed on the eviction papers.

3. How the Notices Must Be Served Upon You

The law is very strict about how rent demand notices and petitions in summary proceedings must be served on tenants. (RPAPL § 735.) Generally, a true copy of the notice (that is, an unaltered photocopy of the original) must be delivered to each tenant by one of the following three methods.

a. Personal Delivery

Personal delivery means being handed a copy of the notice. If you refuse to take the notice, it can be left at your feet, for example, or in another location where you can see it. The notice needn't be delivered at the rental unit. It can be delivered to you in the lobby, the elevator or even on the street outside your building.

Once you are handed a copy of the notice, service is complete. Your time to respond to the notice begins on the day it is delivered. Section C, above, has more on calculating your deadline to pay or leave. Section I3, below, has more on calculating a New York City tenant's deadline to answer the petition.

b. Substituted Service

Your landlord's agent or process server is allowed to deliver a copy of the notice to another person who either lives or works at your rental unit—if that person will take it. (RPAPL § 735.) This is known as "substituted service."

The person accepting the notice can be anyone who lives with you—your co-tenant, roommate or family member. Anyone who works at your home, such as your housekeeper or nanny, may also accept the notice. Delivering the notice to your neighbor is improper service, as is handing the notice to a temporary guest or visitor at your rental unit. The person who accepts the notice at the rental unit must actually live or work there.

If your copy of the notice is dropped off with someone at your apartment who lives or works there, the landlord's agent or process server must take an extra step to complete service. Additional copies of the notice that was delivered to your rental unit must be mailed to you (and to your co-tenants if you have any) by certified or registered mail, and by

regular mail. Both mailings must be posted within one business day after the papers are delivered to your apartment. Substituted service is complete as of the day the landlord mails copies of the notice to you—your deadline to respond to the notice begins to run that day—even if you don’t actually receive the notice until a few days later.

c. Conspicuous Place (“Nail and Mail”) Service

The final way that service may be effected is by “conspicuous place” service. This is often called “nail and mail” service since, in the old days, legal papers were nailed to a tenant’s door and then mailed to the tenant. Although no one uses nails anymore, the name has survived for any manner of service in which the papers are affixed to a conspicuous part of the premises and then sent to the tenant. Usually, the notice is taped to the outside of your entry door or slipped under the door, if it can slide through easily. Squeezing the notice between the door and doorknob, or between the door and doorjamb is not permitted, since the papers may easily fall and get removed or blown away. (RPAPL § 735.)

In addition to affixing the papers to your front door, additional copies of the notices must be mailed to you by certified or registered mail, and another by regular mail, within one day after the papers are delivered.

When a rent demand or eviction papers are taped to the front door, many tenants think that the landlord is trying to harass or embarrass them. But this is the method that the law prescribes if, after two attempts, you can’t be served personally or by substituted service.

Nail and mail service is the least reliable form of service. The notice could be removed from the outside of the door, for example, before you get home to see it. Because of that, the law makes this type of service a little tougher for landlords to carry out:

- The landlord can’t resort to nail and mail service unless a minimum of two attempts were made to serve the notice on you either personally or to somebody else who lives or works at your unit.
- The service attempts must be made at times of day when one could reasonably expect to find you at home. Judges generally say that service is proper if one of the two service attempts occurred during business hours, with another attempt made during non-business hours.

Nail and mail service is complete as of the date copies of the notice are mailed to you. If the notice is a rent demand, that means that the deadline to pay or leave begins that day, even if you don’t actually receive the notice until later. Similarly, if the notice is a nonpayment petition, your time to answer starts as of the date copies of the notice are mailed to you.

I. Answering the Nonpayment Petition: Procedural Considerations

As directed in the notice of petition, you must “answer,” or respond, to the petition in court in order to avoid a default judgment against you and eviction from the rental unit. An answer explains your “defense,” or legal excuse, for not paying rent. For example, a landlord’s failure to repair unsafe conditions in your apartment, after receiving notice that repairs are necessary, is a valid tenant defense for withholding rent. (We discuss this and other common defenses in Section J, below). In addition to one or more defenses, your answer may raise any claims you have against your landlord for money damages in your answer, say, for rent overcharges, a breach of the warranty of habitability or for personal property destroyed by a water leak in your unit.

You may answer the petition orally or in writing. Section 1, below, examines the merits and drawbacks to both options. The procedure and timetable you must follow to answer the petition depends on whether you live within or outside New York City. Sections 3 and 4, below, cover the how, when and where questions.



Don’t depend on a co-tenant to answer the petition for you.

When co-tenants are served with eviction papers, each should answer the petition individually, even if your defenses and claims are exactly the same. Co-tenants are “jointly and severally” liable for rent—which means you’re both on the hook for each other’s share of rent in addition to your own. If your co-tenant defaults by not filing an answer, you will be held legally liable for all of the rent due to the landlord.

If you don’t answer the petition within the time provided, the landlord may ask the court for a “default” judgment and you may be evicted without ever having your day in court. Chapter 16, Section

17, discusses default judgments and what you can do if you face eviction without ever having received a notice of petition and petition nonpayment.

Once you're familiar with the rules on filing an answer, go to Section J, below, to focus on the substance of your response. There, we look at common defenses and counterclaims that tenants may raise in their answer.

1. Deciding Between an Oral and Written Answer

Your answer may be oral or written. Here are some points to keep in mind when deciding which is best in your situation.

a. Oral Answer

Answering orally means using your own words to explain to the court clerk (or a judge outside New York City) why you haven't paid rent or why you dispute the amount of rent your landlord claims is due. In addition to one or more defenses, your oral answer can include any money claims you have against the landlord—for example, damages for a rent overcharge or for personal property destroyed by a landlord-caused water leak or a rent abatement for uninhabitable conditions. You can also raise so-called technical defenses in your oral response—for instance, that you never received a rent demand from the landlord. Section J, below, analyzes common defenses and counterclaims.

The person to whom you give your oral answer, be it a court clerk or a judge, may ask questions about your case in order to fully understand your defenses and claims. That person may also take notes or complete a form in response to your comments. These notes become part of your court file.



The NYC Housing Court has a special “pro se” answer form for tenants who represent themselves without a lawyer. See the sample “Landlord/Tenant Answer in Person,” below. It's the clerk's job to fill out the form for you, based on your answers to various questions. After you tell the clerk your answer, get a copy of the form and review it to make sure that the clerk has checked off or written down all of the defenses that apply to your case. If something is missing, ask the clerk to include it on the form before you leave. The clerk keeps the original answer form and sends a copy to the landlord or the landlord's attorney.

b. Written Answer

Instead of answering orally, you may file a written answer. There are several advantages to filing a written answer:

- the exercise of drafting an answer helps you focus on all available defenses and counterclaims
- a written answer eliminates any chance that your answer will be misunderstood by the court clerk or judge who takes it
- if you need to appeal an adverse decision, a written answer provides an unequivocal record of all of the defenses and counterclaims you raised in the proceeding.

A big disadvantage to a written answer is the level of difficulty and amount of time it takes to draft one. The answer must follow a particular format to comply with court rules. Given the extremely short period of time within which tenants must answer, getting a written answer right is a very tall order. That's why most tenants respond orally or hire a lawyer to draft a written answer.

For the intrepid among you, we've provided a model answer you can refer to when drafting your own answer. See the “Answer With Counterclaim and Jury Demand,” in Section K, below. Just remember that written answers must be “served” on the landlord (or the landlord's attorney) before you go to court, by mailing or delivering a copy to the address listed on the notice of petition. You'll also need to prepare a short “affidavit of service”—a sworn statement that you sent or mailed a copy of the answer to the landlord. (There's a model affidavit of service following the model answer, below.)

There's no requirement that oral answers be served on the landlord, even if reduced to writing on a court's pre-printed answer form (discussed in the previous section).

2. Your Right to a Jury Trial

New York tenants have the right to a jury trial in an eviction proceeding. (RPAPL § 745.) However, your lease or rental agreement probably contains a “jury waiver” clause in which you gave up this right. Jury-waiver clauses are enforceable. Without a jury, any trial of your case is heard by a judge alone.

If you haven't given up your right to a jury, you may request a jury when you answer the petition. (See the Jury Demand section at the end of the

CIVIL COURT OF THE CITY OF NEW YORK

County of _____

Index Number _____

Housing Part

Petitioner(s),
against

Respondent(s)

**LANDLORD/TENANT
ANSWER IN PERSON**

Address: _____

_____ Apt. _____

Respondent has appeared and has orally answered the Petition as follows:

AnswerSERVICE

1. _____ The Respondent did not receive a copy of the Petition and Notice of Petition.
2. _____ The Respondent received the Petition and Notice of Petition, but service was not correct as required by law.

PARTIES

3. _____ The Respondent is indicated improperly, by the wrong name, or is not indicated on the Petition and Notice of Petition.
4. _____ The Petitioner is not the Landlord or Owner of the building.

RENT

5. _____ The Respondent was not asked, either orally or in writing, to pay the rent before the Petitioner started this proceeding.
6. _____ The Respondent tried to pay the rent, but the Petitioner refused to accept it.
7. _____ The monthly rent being requested is not the legal rent or the amount on the current lease.
8. _____ The Petitioner owes money to the Respondent because of a rent overcharge.
9. _____ The rent, or a portion of the rent, has already been paid to the Petitioner.

APARTMENT

10. _____ There are conditions in the apartment which need to be repaired and/or services which the Petitioner has not provided.
11. _____ The Respondent receives Public Assistance and there are Housing Code violations in the apartment or the building.
12. _____ The apartment is an illegal apartment.

OTHER

13. _____ General Denial.
14. _____ Other Answer _____

Dated _____

Clerk's Initials _____

NOTICE OF SCHEDULED APPEARANCE

This case is scheduled to appear on the calendar as follows :

DATE: _____ TIME: _____ PART: _____ ROOM: _____

YOU SHOULD ARRIVE AT THE COURTHOUSE AT LEAST ONE HALF HOUR BEFORE THE ABOVE SCHEDULED TIME, TO ALLOW TIME TO BE PROCESSED THROUGH THE METAL DETECTORS. IF A SETTLEMENT IS NOT REACHED ON THE ABOVE SCHEDULED DATE THE CASE MAY BE SENT TO A TRIAL-READY PART FOR A TRIAL. IF YOU WILL NOT BE READY FOR TRIAL ON THE ABOVE SCHEDULED DATE, YOU MUST ASK THE COURT FOR ANOTHER TRIAL DATE. IF THE COURT DOES NOT ACCEPT YOUR REASON FOR NOT BEING READY FOR TRIAL, AND YOUR REQUEST FOR ANOTHER TRIAL DATE IS DENIED, YOU MAY BE REQUIRED TO PROCEED TO TRIAL IMMEDIATELY.

**THE CLERK CANNOT CHANGE THE SCHEDULED DATE OR TIME.
YOU MUST APPEAR AND BRING THIS FORM WITH YOU.**

model Answer, below.) In some courts, you'll be required to fill out a jury demand form and pay a small fee.

Many tenant advocates feel that juries are good for tenants, since they tend to be more sympathetic than judges and are frequently biased against landlords. But selecting a jury is a long and elaborate process that will delay a final resolution of your proceeding. Jury selection will also require you (and your landlord's attorney) to make additional court appearances. If your lease or rental agreement entitles the prevailing party to legal fees, demanding a jury could expose you to more financial liability if you lose the case.

3. Procedure to Answer Nonpayment Petition in New York City

In New York City, the notice of petition must direct the tenant to answer the landlord's petition *within five days*. To answer, the tenant must go to the landlord-tenant clerk's office at the courthouse address listed on the notice. The tenant may answer orally or in writing. We flesh out the details in the sections below.

a. Calculating the Five-Day Deadline

New York City tenants have five days to answer the landlord's petition. The five-day period begins to run the day after service of the notice of petition and petition. If the deadline falls on a Saturday, Sunday or other New York holiday (when the courts are closed), the tenant's deadline to answer is extended until the next business day.

EXAMPLE: A process server hands Sandy a notice of petition on Tuesday, March 1. The five-day deadline to answer the petition begins Wednesday, March 2—the next day. Since the courts are closed when the deadline ends on Sunday, March 6, Sandy's time to answer is extended until Monday, March 7.

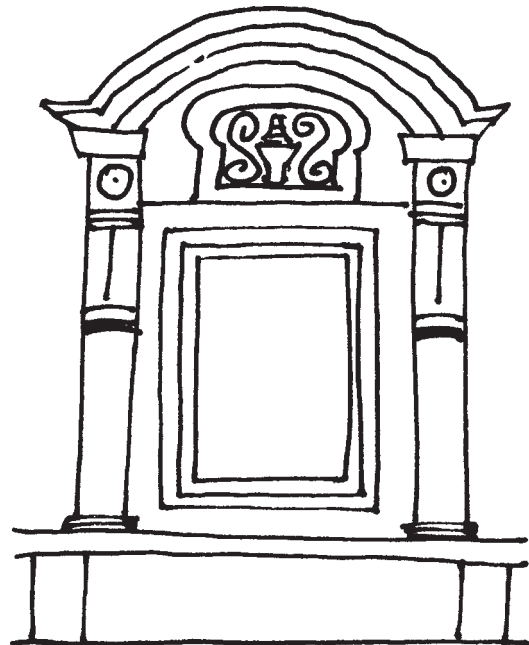
Will the court accept a late answer? It depends. Once a tenant's five-day answer period ends, the landlord may ask the court to enter a default judgment and eviction warrant against the tenant. The clerk will not accept an answer if the landlord has already applied for and is awaiting a default judgment. But if the landlord has not yet applied for a default judgment, the clerk may accept the late answer.

If the clerk refuses to accept the late answer, you'll need to ask the clerk to help you complete a form called an "order to show cause" to permit you to ask a judge for permission to file a late answer. Be ready with a good explanation as to why you didn't file your answer on time and proof of your excuse. For instance, if you missed the deadline because you were in the hospital or on a trip, bring copies of your hospital discharge papers or travel tickets. For more information on default judgments and how to ask the court to "vacate" them, see Chapter 16, Section K1.

b. Where to Go to Answer

All eviction proceedings in New York City are heard in the landlord-tenant part of the New York City Civil Court commonly known as "Housing Court." There are seven Housing Court branches: two in Manhattan (one in Harlem and one downtown), two in Brooklyn (in Red Hook and downtown) and one each in the boroughs of The Bronx, Queens and Staten Island. (Appendix A lists the addresses, phone numbers, clerks' office hours and website for each branch.)

The notice of petition you receive lists the address for the courthouse you're required to visit to answer the petition. When you get there, go to the landlord-tenant clerk's office. If you're not sure where it is, ask a court officer. Giving directions to areas of the



courthouse is one of their functions. You may answer orally or in writing. Section 1, above, discusses the relative advantages of each alternative. Section J discusses the substance of an answer.

c. Getting Your First Hearing Date

When you answer the petition, the court clerk will give you a time and date to return to court (usually within two weeks of the date you answer the petition) for the first hearing of the eviction proceeding. The clerk will also tell you which room of the courthouse (also referred to as a “Part”) you should go to on that date. For instance, if are assigned to Part G, Room 823 at 111 Centre Street, New York, N.Y., you must go to room 823 on the eighth floor. We explain, below, what to expect and what to bring with you to court for the first hearing.

4. Answering the Nonpayment Petition Outside New York City

Tenants outside New York City may answer orally or in writing at the first hearing of the proceeding. The date, time and place for the hearing are listed on the notice of petition.

a. Tenant’s Time to Answer Generally

Outside New York City, the notice of petition and petition nonpayment must be served to you at least five and no more than 12 days before the hearing date set in the notice of petition. That gives you between five and 12 days to formulate your answer. At the hearing, you can explain your answer to the judge in your own words, or you can prepare a written answer to give to the judge that day. If you put your answer in writing, bring a copy for the landlord and keep a copy for yourself. The original should go to the judge for the court file.

If the notice of petition and petition was served fewer than five days before the hearing date (counting weekends and holidays), point this out to the judge at the first hearing. The judge may give you more time to answer or even dismiss (throw out) the lawsuit.

b. Notice of Petition May Shorten Deadline and Change Procedure

Outside New York City, the notice of petition may direct the tenant to answer at least three days before the first hearing date, if and only if the notice of

petition and petition nonpayment are served *at least eight days before* the hearing date set in the notice.

If you wish to answer orally, you must go to the office of the court clerk in the courthouse where the proceeding is scheduled to be heard (the address is on the notice) at least three days before the hearing date and answer before the clerk. If you prepare a written answer, you must first mail or deliver a copy of it to the landlord (or to the landlord’s attorney) and then file the original and an affidavit of service with the court clerk at least three days before the hearing date.

After you answer, you must still appear in court at the time and date set in the notice.

5. What to Bring to Court When You Answer the Petition

Here is a checklist of documents and other materials you should bring with you to court when you answer. Keep them in a file for future court appearances.

Written rent demand, if any. Bring every copy that was handed to you, posted on your door or mailed to you, including envelopes, since the postmark may help determine when service was complete.

Notice of petition and petition nonpayment. Bring every copy of the eviction papers (and any attachments) that were handed to you, posted on your door or mailed to you, including envelopes, since the postmark may help determine when service was complete.

Current lease or rental agreement, if written. If you are rent stabilized, also bring your initial lease for the apartment and all renewals.

Correspondence to and from the landlord. Bring copies of any letters, notes or emails you sent or delivered to your landlord, the manager or building superintendent that are relevant to your dispute—for example, one or more letters notifying the landlord of needed repairs in your apartment. Also, bring copies of any relevant agreements, letters or notes which your landlord, manager or super sent to you—for example, an agreement to fix a dangerous condition that the landlord later reneged on.

Daily logs. If you have withheld rent due to excessive noise or a lack of heat, hot water or elevator service, bring a daily log that shows the frequency of the problem.

DHCR rent registrations, orders, rent histories or printouts. If you are claiming rent overcharge, bring copies of all rent records that support your claim,

including rent reduction orders that are still in effect. We discuss rent overcharge claims, and the documents you need to prove them, in Chapter 4, Section H.

Inspection or violation reports. Bring copies of any reports made by a government agency attesting to conditions in your rental unit or at the property that are relevant to your rent withholding.

Proof of military service if you are seeking protection from eviction on this ground. See “Military Tenants Have Special Rights” in Section F, above.

6. Naming a Legal Representative to Answer the Petition for You

If you can't answer the petition yourself, because you are hospitalized or away from home to attend to business or family matters, you may hire an attorney to answer for you or appoint a “legal representative,” a person you trust and to whom you have given written authority to act on your behalf to answer the petition. When answering the proceeding, your legal representative must bring a letter signed by you and identifying the proceeding by its title (such as Smith vs. Jones) and its index number. After the petition is answered, you should do everything possible to appear in person at the first hearing, since no one will be as familiar with the facts of your case as you are.

7. “Default Judgment”: Failing to Answer May Result in Your Eviction

If you don't answer the eviction petition within five days in New York City (or outside New York City, if you fail to appear in court on the date listed on the notice of petition), the landlord wins an automatic “default” judgment against you. That means that the landlord can ask the court to issue a warrant for your eviction at any time, so long as ten days have passed since the eviction papers were served to you. An eviction warrant authorizes a marshal or sheriff to remove you from the rental unit. Before you may be evicted, however, the officer must first serve you with a “notice of eviction.” If the notice of eviction is your first notice of the eviction proceeding, (in other words, you never received a notice of petition and petition), you may take these steps to stop the eviction and “vacate” the default judgment. We discuss how notices of eviction work and outline the steps you must take to stop an eviction in Chapter 16.

J. Preparing Your Answer: Available Defenses and Counterclaims

Before answering the petition, you'll need to evaluate available tenant defenses to holdover proceedings to see if any apply to your case. This is also the time to figure out whether you have any claims of your own, called counterclaims, against the landlord.

There are two main types of defenses. The first type, which we call technical defenses, exploit any mistakes the landlord may have made when terminating the tenancy or serving the eviction papers. We detail several common technical defenses in section 2, below. The second type, called affirmative defenses, are legal justifications for staying in occupancy, such as your having already paid the rent. Section 3, below, looks at affirmative defenses. Counterclaims are discussed in Section 4.

More than one defense and counterclaim may apply to your case. If so, don't be shy about raising more than one in your answer; that's the strategy lawyers use.

A model written answer to a nonpayment petition appears in Section K, below. (See the “Answer With Counterclaim and Jury Demand”.) It includes all of the technical and affirmative defenses discussed here. The model is designed to help you plan your own answer and to show you what an answer looks like. You shouldn't use all of the defenses and claims that are in the model. Select only those that apply to you and adapt the words to your situation.

1. The “General Denial”

One of the functions of a written answer, in addition to raising defenses and counterclaims, is to respond to the landlord's claims in the petition. The paragraphs of a petition are numbered, so you can respond to them one by one. One way to do this is to “admit” that certain paragraphs of the landlord's petition are true; to “deny” the truth of other specified paragraphs, and finally, to “deny having knowledge or information sufficient to form a belief” about others; the latter is simply a fancy way to say “I have no idea whether this paragraph is true or false.” This paragraph-by-paragraph approach, while tedious and time consuming, makes sense when responding to big, complicated lawsuits.

The quick and easy way to respond to the petition is begin your answer with a “general denial.” (See

Answer form, paragraph 1.) This means that you dispute the landlord's claim that you owe rent. This is an acceptable way to respond to a nonpayment petition, since summary proceedings are designed to be simple and expedient.

Courts Are Inconsistent About Landlord Mistakes

Unfortunately, the judges who hear landlord-tenant matters have a great deal of discretion when deciding whether a given notice is legally sufficient. Sometimes, a mistake that results in a dismissal of the eviction proceeding by one judge will be ignored by another judge. As a general rule, judges tend to be strict about proper service of the rent demand and nonpayment eviction papers. They are inconsistent about the level of detail required in the rent demand, and are increasingly lax about mistakes or omissions in the notice of petition and petition (since there's a rule that permits landlords to correct them after the proceeding begins). The moral of the story is that tenants who are defending an eviction proceeding in court should point out as many landlord errors and omissions in their answers as they can, and hope that one will stick and result in a dismissal of the case.

2. Common Technical Defenses

A technical defense is based upon a procedural mistake the landlord makes when demanding rent, preparing the eviction papers or serving you. Here are the most common technical defenses New York tenants raise in their answers.



You can file a motion to dismiss instead of filing an answer for legal technicalities.

If the landlord's case is full of technical errors like the ones listed here, there are two procedural roads available to you. You may answer the petition and raise the mistakes as defenses in your answer, or you may file a "motion to dismiss," which asks the court to knock the lawsuit out of court before trial. Preparing a motion to dismiss is complicated and usually requires an attorney. Chapter 16, Section J, discusses the pros and cons of filing a motion to dismiss instead of an answer.

Improper service of the notice of petition and petition.

(Answer form, paragraph 2.) In order for a court to have "personal jurisdiction" over you—that is, to have the power to require your presence in court—you must have received notice of the proceeding the right way. We explain how eviction papers must be served upon tenants in Section H, above. If, after reading this section, you believe that the landlord served the notice of petition and petition the wrong way or didn't follow all of the required steps (such as mailing a copy of the papers to you if the papers were taped to your front door), assert this defense in your answer.

To figure out whether the papers were properly served, the court may order a "traverse," which is a special hearing that's held before the landlord can even begin her nonpayment case. The only issue is proper service of the papers upon you. The landlord is required to prove, through witness testimony or through documents, that the eviction papers were properly served to you. If the judge finds that service was improper, the entire proceeding is dismissed. The landlord may start over by serving you with a new notice of petition and petition nonpayment.

Improper service of the rent demand notice. (Answer form, paragraph 3.) If the landlord demanded rent by written notice (not orally), the notice had to have been given to you in a special manner. Section H, above, explains how rent demands must be served. If, after reading this section, you believe that the notice was served the wrong way, state this defense in your answer. At trial, the landlord will be required to prove proper service.

Failure to demand rent. (Answer form, paragraph 4.) A landlord's failure to demand rent before starting the nonpayment proceeding is a complete defense to eviction.

Legally insufficient rent demand. (Answer form, paragraph 5.) A rent demand from the landlord is a legal prerequisite to a nonpayment proceeding. To be effective, the demand must be clear and unequivocal. The elements of an oral and written rent demand are discussed in Section A, above. If, after reading this section, you believe that your landlord's rent demand was vague or equivocal, raise this defense in your answer. The judge will decide whether the demand was legally sufficient by examining the notice, if the demand was written, or by evaluating the testimony of the landlord or the landlord's agent, if the demand was oral.

Improper petitioner. (Answer form, paragraph 6.)

The person or entity who started the summary proceeding against you must be your landlord or a person authorized to begin a summary proceeding under RPAPL § 721 (as described in Section H, above). If the proceeding was brought by your landlord's attorney, managing agent or a person or entity that you've never gotten notice about or heard of, raise this defense in your answer.

A Lack of Financial Resources to Pay Is Not a Defense

Though it may seem harsh, a lack of money to pay the rent will not excuse you from paying rent to the landlord, nor will adverse financial circumstances forestall an eviction. If your cash crunch is temporary and you can demonstrate that you will be receiving sufficient funds to pay all the rent you owe within a few weeks' time, the landlord may be willing to agree to settle the case by way of a written agreement. (We discuss such agreements, known as stipulations of settlement, in Section M, below.) A judge may strongly suggest, but may not compel, the landlord to enter into such an agreement with you.

If there is no financial relief on the horizon, consider visiting your local Department of Social Services before your first court date. Depending on your personal circumstances and the size of your family, you may qualify for rent assistance. Appendix A contains a list of social services resources.

3. Affirmative Defenses

In addition to any technical defenses, your answer should raise any substantive justifications or good legal reasons you have for not paying rent. Unlike the technical defenses listed in Section 2, above, affirmative defenses require you to prove a set of facts—usually through witness testimony, photos, videos or documents. Technical defenses need only be raised in the answer—the judge takes it from there. With affirmative defenses, the burden of proof is on you, the tenant.

Here are some common affirmative defenses, and some suggested evidence that will help prove each.

Payment. (Answer form, paragraph 7.) Obviously, full payment is a full defense. If you've paid the rent,

bring to court your canceled checks, traced money orders or rent receipts as proof of payment. If the landlord has accepted partial payment of the rent, state this in your answer.

Refusal to accept rent. (Answer form, paragraph 8.)

A New York landlord may not refuse a tenant's tender of the demanded rent, even if the payment is offered after the "pay or leave" deadline date set in the rent demand.

Repair-and-deduct. (Answer form, paragraphs 9–13.)

New York law permits tenants to make deductions from monthly rent for repairs and utility payments that are the landlord's responsibility. Chapter 9 explains how and when tenants may use the repair-and-deduct remedy. To prove the defense, you'll need a copy of your note or letter to the landlord notifying her of the needed repair and a receipt for your out-of-pocket expenses related to the repairs—for example, a letter notifying the landlord that your entrance door lock is broken and a receipt from a locksmith for the repair of the lock. If you have paid a utility bill, you will need a copy of the utility shut-off warning and a payment receipt from the utility.



If your apartment is in poor or hazardous condition and you need repairs, or your building lacks essential services such as heat or hot water, ask the court clerk to schedule an inspection by the NYC Department of Housing Preservation and Development (HPD). Keep in mind, though, that budget cutbacks have made inspectors less readily available than they once were. If the clerk tells you that an inspector is not available, ask for an inspection when you appear at your first court date.

Repairs and/or serious violations. (Answer form,

paragraphs 14–18.) A breach of the warranty of habitability due to needed repairs and serious code violations is the most commonly asserted tenant defense to a non-payment proceeding. Chapter 9 explains the warranty of habitability and describes the types of conditions which violate it. When you go to court, you'll need to prove two things:

- First, that unsafe or unlivable conditions exist in your apartment. Dated photos or copies of reports made by housing inspectors are great forms of objective evidence.
- Second, you'll need to show that you notified the landlord or the landlord's agent about the unsafe or unlivable conditions, and were will-

ing to provide access to your unit, if necessary, for repairs or remedial work. Copies of one or more letters to the landlord, sent via certified mail, are the best evidence.

You may also prove these elements through your testimony, the testimony of other occupants, neighbors or a contractor, photos, videotape or certified copies of violations issued by housing inspectors. Expert testimony from an architect or engineer is not required.

Rent overcharge. (Answer form, paragraphs 19–20.) Assert this defense if your landlord is demanding more rent than is legally authorized under your lease or rental agreement or applicable rent regulations. This is also the way to challenge a late fee, returned check charge or other fee that you think is unauthorized or excessive. Chapter 3 covers the basic rules on how much rent your landlord can charge, including rules on late fees and other charges. Chapter 4 examines legally regulated rents for rent-stabilized and rent-controlled units. If you are a rent-regulated tenant, you may also claim triple damages, the statutory penalty for landlord overcharges. Section 4, below, discusses counterclaims.

You'll need to prove overcharges with documents such as your lease, DHCR apartment registration statement/s, rent increase applications, rent histories or any orders reducing your rent issued by the DHCR or a judge in a prior proceeding. Chapter 4, Section H, details rent overcharges, and the time limits on raising this defense.

4. Asserting Counterclaims

A counterclaim is a claim a tenant makes against the landlord. It can be raised orally or contained in the written answer, following the general denial and defenses. Although tenants may technically use as a counterclaim *any* claim they have against the landlord, practically speaking, there are two legal roadblocks that limit your counterclaim rights.

The first roadblock, a “counterclaim waiver” clause, is buried in most written leases and rental agreements. It bars the tenant from raising a counterclaim against the landlord in any action or proceeding. Judges honor counterclaim waiver clauses in nonpayment proceedings by “striking” from the answer any counterclaim made by a tenant whose lease or rental agreement contains a counterclaim waiver clause. Once a counterclaim is struck, it is as if it had never been raised in the first place.

That said, there is one exception. A counterclaim waiver clause will not bar a tenant's claim that is “inextricably related,” or part and parcel, of the landlord's claim for rent. We'll look at examples of such related claims in a minute.

Even if your lease or rental agreement does not contain a counterclaim waiver clause, the judge has discretion to “sever” any counterclaims that are unsuited to a summary disposition. Unlike a regular lawsuit, a summary eviction proceeding is designed to move very quickly. There's no automatic right to take depositions or engage in discovery (the process in which documents and testimony may be demanded from one's adversary or other procedures that slow cases down). For example, if you raised a negligence counterclaim for money damages resulting from a burglary or assault you suffered, the judge may “sever” it from the eviction proceeding. Your negligence claim is “preserved” and you may continue it in a separate legal action. But the judge won't let it slow down the eviction proceeding.

Here are the types of counterclaims that may be heard in nonpayment proceedings, even if the tenant's lease or rental agreement has a counterclaim waiver clause:

- **Repair-and-deduct.** (Answer form, paragraph 21.) You are entitled to a reimbursement or rent offset for money you spent repairing unsafe or dangerous conditions in your rental unit, after notice to the landlord. We explain the situations in which tenants are entitled to repair and deduct in Chapter 9. You may assert repair and deduct in your answer both as a defense and a counterclaim.
- **Breach of the warranty of habitability.** (Answer form, paragraph 22.) A breach of the warranty of habitability entitles a tenant to a reduced rent, known in court as a rent abatement. You may raise a landlord's breach of the warranty of habitability in your answer both as a defense for nonpayment of rent and as a counterclaim for a rent refund. The measure of damages is how much the apartment is worth in light of the defective conditions, compared to how much it rents for. Chapter 9 discusses the scope of the warranty.
- **Rent overcharge.** (Answer form, paragraph 23.) You may make a claim for any excess rent collected by the landlord and, if you are a rent-regulated tenant, you may claim triple damages

if the overcharge is willful. (Chapter 4, Section H, has more information on rent overcharges, including time limits for seeking overcharges and triple damages.) You may raise rent overcharge in your answer both as a defense and a counterclaim.

- **Attorney fees.** (Answer form, paragraph 24.) If your landlord has reserved a right to attorney fees in the lease or rental agreement, you have a reciprocal right under law (for more information, see Chapter 2).

An example of a written answer to a nonpayment petition ("Answer With Counterclaims and Jury Demand") is shown below. It includes all of the technical and affirmative defenses discussed in this chapter. It is designed to help you plan your own answer and to show you what an answer looks like. You shouldn't use all of the defenses and claims that are in this model. Select only those that apply to you and adapt the words to your situation.

K. New York City's Rent Deposit Law

Once a nonpayment (or a holdover) proceeding is initiated against you, the landlord may be entitled to request a deposit of rent due from you, pending the final outcome of the proceeding. The legal term for rent payable after the termination of a tenancy is "use and occupancy." If you refuse to pay the deposit, the landlord may request a hearing on whether you should be required to make a rent deposit.

If you rent in New York City, under RPAPL § 745(2), your landlord may request a deposit of rent or use and occupancy upon the sooner of the following two events:

- the nonpayment (or holdover) proceeding has been in court for more than 30 days since the first appearance of the landlord and tenant in court (not counting any adjournments requested by the landlord), or
- your request for a *second* adjournment of the proceeding. You're entitled to request an adjournment of your first court date if you need additional time to prepare your case or to hire an attorney. (Section L2, below, discusses adjournments.) You can't make unlimited requests for an adjournment, however. After the second adjournment, the landlord may ask for an order requiring you to deposit the

amount of rent in dispute with the court, a financial institution or an attorney.

If you find yourself at a rent deposit hearing, you may completely avoid depositing rent if one of the following tenant defenses applies to your situation:

1. The person or entity that brought the eviction proceeding against you is not your landlord or other person authorized to maintain a proceeding under state law. (RPAPL § 721.) If the person or entity named as the "petitioner" in your eviction lawsuit is not the same one that is listed on your lease or rental agreement, and is a stranger, you should point this out to the judge at the rent deposit hearing.
2. You have involuntarily vacated all or part of the premises due to an actual eviction, actual partial eviction or constructive eviction (which means that physical conditions at the property were so intolerable that you were forced to leave).
3. You were not properly served with the notice of petition or petition nonpayment, (in a nonpayment proceeding) or the notice of petition or petition holdover (in a holdover proceeding), or the proceeding was brought in the wrong court. The proceeding must be brought in the court in the county, town or village in which the premises are located.
4. You receive public assistance and there is at least one hazardous housing code violation on record against your building. (Social Services Law 143-b, the so-called "Spiegel Law.")

In nonpayment proceedings, if only some of the rent due is in dispute, perhaps because your landlord has refused to reimburse you for a repair or because of an overcharge, the judge may order you to deposit the undisputed portion of the rent with the court. Tenants who live in buildings with 12 apartments or fewer may be directed to pay the undisputed rent directly to the landlord.

Use and occupancy rent is usually set at the same rate as the rent you paid in the last month of your occupancy. The judge's rent deposit order may include immediate and subsequent payments of use and occupancy rent for the length of the proceeding. (You get five days to make the first payment.) If you miss a first or subsequent payment, the judge can order an immediate trial, meaning that you won't get any further adjournments. At the conclusion of the case, any sums paid by the tenant are credited against

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

123 Realty Company, Inc.,
Petitioner-Landlord,

-against-
Penny L. Perkins,
Tenant-Respondent.

**ANSWER
WITH COUNTERCLAIMS
AND JURY DEMAND**

Index No. (L&T) 76532/03

Tenant-Respondent Penny L. Perkins, as and for her answer to the Petition, alleges as follows:

1. Tenant interposes a general denial to the petition.
2. Landlord failed to serve the Notice of Petition and Petition in the manner provided by Real Property Actions and Proceedings Law ("RPAPL") § 735, in that service was not attempted at the premises on the dates or times alleged in the affidavit of service.
3. Landlord failed to serve the Rent Demand Notice in the manner provided by RPAPL § 735, in that the petitioner failed to mail copies of the rent demand notice to Respondent at the premises by regular or certified mail.
4. Landlord failed to demand the rent.
5. Landlord failed to make a proper and sufficient demand of the rent pursuant to RPAPL § 711(2).
6. Petitioner 123 Realty Corp. is not the landlord or other entity authorized under Real Property Actions and Proceedings Law ("RPAPL") 721 to commence this summary proceeding.

FIRST AFFIRMATIVE DEFENSE

7. Tenant has paid all of the rent and additional rent sought in the petition.

SECOND AFFIRMATIVE DEFENSE

8. On March 1, 200x, Landlord refused to accept Tenant's tender of all of the rent demanded in the petition.

THIRD AFFIRMATIVE DEFENSE

9. On January 3, 200x, the premises became infested and overrun with roaches posing a significant health risk to respondent and her family and preventing the use of the kitchen and dining area.
10. The Landlord (and/or its agents) had oral notice of this condition since January 3, 200x and written notice since January 5, 200x.
11. The Landlord failed to respond to Tenant's notices or to take any corrective action to abate the severe roach infestation.

12. On February 1, 200x, Tenant hired and paid \$125 to Blotto Extermination Inc., to eradicate and remove the roaches from the premises.

13. The Landlord's failure to abate the roach infestation, after notice and an opportunity to do so, entitled Tenant to invoke the common law "repair and deduct" remedy and deduct \$125 from her February, 200x rent payment.

FOURTH AFFIRMATIVE DEFENSE

14. There are conditions which currently exist in the subject premises which are dangerous, hazardous and detrimental to the life, health and safety of the Tenant. These conditions started on or about March 1, 200x and continue to the present, and include, but are not limited to, the following:

- (a) Continuous and severe water leakage on east side of living room and bedroom ceilings and walls;
- (b) Continuous and severe water damage to plaster and paint on east side of living room and bedroom ceilings and walls; and
- (c) Water damage to, and buckling of, parquet flooring on east side of living room and bedroom areas.

15. These conditions are believed to violate state and local housing maintenance laws and codes.

16. These conditions have caused Tenant substantial inconvenience and hardship, have made most, if not all, of the premises unsuitable for habitation and, have deprived the Tenant of the beneficial use and enjoyment of the premises.

17. Tenant has given the Landlord oral and written notice of said conditions, but Landlord has failed or refused to correct them.

18. As a result, Landlord has breached the warranty of habitability, found in Real Property Law ("RPL") § 235-b, which has relieved the Tenant of the obligation to pay the rent now claimed to be due.

FIFTH AFFIRMATIVE DEFENSE

19. The Landlord has caused Tenant to be overcharged for rent for the subject premises, which is rent-stabilized.

20. The Landlord's overcharge was knowing and willful.

FIRST SET-OFF AND COUNTERCLAIM

21. Because of Landlord's conduct, Tenant was forced to hire her own exterminator, and Tenant has been damaged in the sum of \$125.00,

SECOND SET-OFF AND COUNTERCLAIM

22. By failing to make repairs and to maintain services, Landlord has violated the warranty of habitability, decreased the value of tenant's apartment, and has damaged tenant in the sum of \$4,500.

THIRD SET-OFF AND COUNTERCLAIM

23. As a result of Landlord's knowing and willful overcharges, Tenant, whose rent is regulated by the Rent Stabilization Code, has been overcharged in the sum of \$3,000.00 and seeks treble damages in the sum of \$9,000.

FOURTH SET-OFF AND COUNTERCLAIM

24. Under the lease for the premises, the landlord has reserved a right to attorneys' fees in any action or proceeding to enforce the lease. Under New York R.P.L. Section 234, Tenant is entitled to a reciprocal right. Tenant hereby demands attorneys' fees in a sum to be determined at a hearing.

WHEREFORE, Tenant respectfully requests that this court dismiss the Petition and award judgment of the counterclaims as follows:

- 1) \$125 on the first counterclaim;
- 2) A 100% rent abatement, or \$4,500, on the second counterclaim;
- 3) \$9,000 in treble damages on the third counterclaim
- 4) Attorneys' fees in an amount to be determined at trial.

JURY DEMAND

Tenant demands a trial by jury in this proceeding.

Signed: Penny Perkins

Penny Perkins, Tenant-Respondent

Dated: March 22, 200x, New York, New York

To:
Clerk of the Civil Court of the City of New York

Billings and Hurst, LLP
Attorneys for Petitioner-Landlord
225 Broadway, Suite 705
New York, NY 10007
(212) 619-7676

STATE OF NEW YORK)
)
) ss:)
)
COUNTY OF NEW YORK)

Notary Public

any judgment amount awarded to the landlord or paid in accordance with the judgment.

If you don't have the money to pay a rent deposit that you are ordered to pay, the court will not grant any further adjournments of the eviction proceeding. That means that you must either settle the case with the landlord or proceed to trial.

L. The First Court Date

Summary eviction proceedings move fast. If you live in New York City, your first hearing will be scheduled by the court clerk to take place within three to eight days after you answer the petition. (See Section I3, above, for the procedure for answering.) Outside New York City, the date for first hearing is listed on the notice of petition.

Here's a rundown on what you may expect.

1. Checking In

Get to court early on the first court date so you can find the courtroom, familiarize yourself with the rules for that courtroom and find your case on the court's calendar. The "calendar" is a list of cases scheduled to be heard that day in that courtroom. Next to the case is a calendar number, which you should jot down. Cases are called in order by calendar number.

All judges have their own rules on how tenants should "check in" and how they should answer the calendar. The rules should be posted near the courtroom entrance. If not, ask the judge's law assistant (who usually sits at a desk near the judge's bench) or a court officer for information on how to check in and answer the calendar. This is an important step to avoid having a default judgment taken against you.

When your case is called on the first court date, you can ask for an adjournment if you need more time to prepare a defense. We discuss adjournments in Section 2, below.



If you are withholding rent because of unsafe or dangerous conditions in your rental unit, you may request an inspection by the Department of Housing Preservation and Development when you answer the petition. If an inspector has not yet visited your apartment by the first hearing date, renew your request for an inspection when your case is called. The case

may be adjourned until an inspection report is available to the court.

If you are prepared to defend your case on the first hearing date, you have a choice. You can try to resolve the case with your landlord by negotiating a stipulation of settlement, which is an agreement that ends the case. A stipulation might call for the tenant's payment of rent due in exchange for the landlord's promise to make certain repairs. Ninety percent of landlord-tenant cases are resolved this way and never go to trial. We discuss stipulations of settlement in detail in Section M, below.

2. Adjournments

Because the first hearing occurs so soon after you're served with eviction papers, you may not have had enough time to evaluate your legal options—let alone prepare for a trial. If you need more time to analyze your legal remedies, gather evidence or retain legal counsel, you may ask for an adjournment. Adjournments of summary proceedings tend to be short—about five to eight days.

The procedure for requesting an adjournment varies, depending on the rules in the courtroom to which your case has been assigned. In some courtrooms, law assistants are authorized to grant automatic one-time adjournments to tenants—no questions asked. Others grant automatic adjournments only when the landlord (or the landlord's attorney) consents. You'll need to go before the judge to request your adjournment if the landlord won't consent or if the judge's law assistant is not authorized to schedule one.



Tenants who live outside New York City and who have not yet answered the petition should request an extension of their time to answer, too. Your answer is due at the first hearing of the eviction proceeding. When requesting an adjournment, ask for an extension of your time to answer the petition, too. That will ensure that you'll be permitted to answer on the adjourned hearing date.

When requesting an adjournment from a judge or law assistant, be specific as to why you need more time—for example, to research your legal position, to gather documents and witnesses to prove a defense or counterclaim or to hire an attorney. Some

judges permit second adjournments as well if the landlord or landlord's attorney consents.



New York City tenants who request a second adjournment may be required to deposit rent with the court or landlord. See Section K, above, for details.

If you can't work out a settlement agreement with the landlord, the eviction case must proceed to trial. If you and your landlord are "ready for trial," meaning that you have the photos, documents and witnesses you need to defend your tenancy, the trial may begin as soon as that day. But if the trial court's calendar is congested with other cases, or if you or your landlord are not prepared to go to trial, the judge may order you to return to court at a future date and time for trial. At that time, you must have all of your documents and witnesses ready.



It is the rare housing court case that makes it to trial on the first court date. Nonpayment cases are first assigned to a "resolution part" of the courthouse where you will be encouraged to settle the case with the landlord. If you are uncomfortable about speaking to the landlord directly but want to attempt a settlement, you can ask a court attorney to act as a go-between. Most cases get settled here. If a settlement cannot be reached, the case is reassigned to a "trial part" courtroom for trial. Section N, below, discusses trials.

M. Entering Into a Stipulation to Settle a Nonpayment Proceeding

Most nonpayment proceedings never go to trial. Once the tenant answers the petition, the vast majority of nonpayment cases are settled by an agreement negotiated between the landlord and tenant, known as a stipulation of settlement. One common settlement scenario is for the tenant to pay the outstanding rent according to an agreed-upon installment payment schedule. To give the agreement teeth, some stipulations provide that the tenant's failure to make an agreed-upon rent installment payment could result in the tenant's eviction. The agreement may also provide for repairs by the landlord. It all depends on the circumstances of your particular case. The landlord may give you more time to move out, reduce the amount of your claim for back rent or even pay your

moving expenses if you are willing to give up your defenses and agree to get out on a specific date.



Don't expect a level playing field in landlord-tenant court. Landlords are usually represented by counsel. If you hire an attorney to represent you in court, your lawyer will hash out the terms of the agreement with the landlord's attorney. If you appear in court without an attorney, the landlord will try to hammer out an agreement with you, write up a settlement stipulation and pressure you to sign it right away. To avoid this, ask the landlord's attorney to consent to a short adjournment so you can have the stipulation reviewed by a lawyer. (This will be cheaper than bringing a lawyer to court with you). If the landlord refuses, you can ask the judge for an adjournment so that you can get an attorney.

A stipulation's terms may be negotiated either in or out of court. While the final document may be drafted and prepared in an attorney's office, the majority are usually handwritten on blank, three-part forms available in most courtrooms. Once the settlement terms are hammered out, you and the landlord go before a judge to have the agreement "so-ordered" by the presiding judge or judicial hearing officer. That gives the agreement the authority of a court order. Alternatively, the terms of an oral stipulation may be explained to the judge by the landlord's attorney and recorded by a court stenographer or audio tape recorder. Putting your agreement writing is a far better practice, because you'll leave court with a copy of the agreement that you can refer to later on. That's far easier and cheaper than ordering a transcribed version from the court if you need it.

Entering into a stipulation can be an expedient and effective way to resolve a nonpayment proceeding, just as long as you don't get bulldozed into signing a stipulation you don't understand, or that omits key tenant terms. This can backfire, landing you back in court fighting for the very relief you thought you had already secured. To be sure that you've covered all the bases, make sure your stipulation of settlement agreement covers the issues discussed here. The sample Stipulation of Settlement Nonpayment Proceeding, below, illustrates how these issues may be resolved into a written agreement.



You can expect to feel pressure from the landlord and even the judge to settle your case by stipulation. Just remember—every tenant is entitled to

decline the landlord's settlement offer and go to trial. We discuss going to trial in Section N, below.

1. Statement of Rent Due

Stipulations settling nonpayment proceedings should clearly state the amount of rent that you and the landlord agree is owed, and for which months. This is especially important if another rent payment has become due while the proceeding has been pending. For example, say you're served with a nonpayment petition in March claiming that February and March rent is due. If you settle the proceeding in April, your agreement should clearly state whether the rent you now owe for April is encompassed by the settlement. To do this, make sure the settlement clearly states:

- the amount of rent due each month under your lease or rental agreement
- the correct total amount of rent and other charges due to the landlord (sometimes called the "rental arrears" or "arrears"): check the math with your calculator, and
- the time periods covered by the arrears.

If the landlord has not performed needed repairs, insist that the stipulation provide for a rent reduction (called an "abatement") as a condition to settling the proceeding. Rent abatements are often negotiated and stated in terms of a percentage of the monthly rent. You and your landlord may agree that a broken refrigerator should entitle you to a 15% rent abatement, for instance, meaning that for every \$100 in rent due while the fridge wasn't working, you agree to pay \$85. Just make sure that whatever rent reduction you agree to is clearly stated, and that the agreement obligates the landlord to make repairs by a certain date. Repair provisions are discussed below in Section 3.

2. Rent Payment Schedule

If you owe rent but need more time to pay, the landlord may agree to settle the nonpayment proceeding under a payment schedule. To make sure everyone is clear on the details, the stipulation should address:

- whether you are to pay the rent due in a lump sum or in two or more installments
- a specific date or dates for payment
- the party to whom the payment must be delivered—for example, the landlord, the landlord's attorney or the managing agent

- the form your payment may take—cash, check, certified check or money order, and
- the manner in which each payment is to be delivered—for example, hand-delivery, overnight or certified mail.

If repairs are required in the rental unit, the tenant's payment schedule may be tied to the landlord's repair obligations (See sample stipulation, paragraph 6.)

3. Landlord's Repair Obligations

If the landlord has agreed to make needed repairs, the stipulation should detail the conditions which require attention. The provision should also fix specific dates and times when the tenant agrees to provide access to the landlord (or the landlord's employees or contractors) to inspect and repair. The agreement should also specify a completion date.

4. Consequences of a Default

The stipulation should clearly describe what will happen if you or the landlord "default"—that is, fail to live up to a promise you made in the stipulation. It's essential that you understand what will happen if you don't pay the rent due by a deadline set in the stipulation, or if the landlord doesn't make a repair as promised. Stipulations usually provide for one of the following consequences for your default:

- **Restoration of case to court calendar.** The stipulation may provide that in the event of a default by you or the landlord, the non-defaulting party may ask the court to "restore" the proceeding to the court's calendar. This means that you and your landlord may end up back before the judge for further proceedings. As a tenant, this is the best default remedy you can negotiate. Why? If you can't meet a scheduled rent installment payment due under the stipulation, the worst that can happen is that you must go back to court and explain to the judge why you defaulted. Most landlords will want the stipulation to contain a tougher remedy, though, such as a judgment or warrant (see directly below).
- **Issuance of final judgment.** Alternatively, the stipulation may provide for the entry of a money judgment and a final judgment of possession in the landlord's favor, with the issuance of a warrant of eviction "forthwith" and its execution

stayed pending your compliance with the agreement's terms. (See paragraph 5 of sample stipulation below.) Your landlord may insist on including this enforcement mechanism if you have been afforded a lengthy pay-out schedule, or when you had been given an opportunity to pay up under a prior stipulation, but failed to comply.



Be careful about attorney fees provisions. You and the landlord may reserve a right to attorney fees in the event of a default by the other. Stipulations which are silent in this regard waive the recovery of fees. Don't insist on a right to attorney fees unless you are confident that you will be able to perform all of the tenant obligations under the stipulation.

5. Termination of Proceeding

The stipulation should provide that upon your full and complete compliance with the agreement's terms and conditions, the case will be deemed "discontinued with prejudice." That means that the landlord can't sue you again over the same thing.



In New York City's Housing Court, judges are required to recite on the record the terms and conditions of any settlement reached with a landlord or attorney who appears in court without an attorney. This happens whether or not you are using a written stipulation. This requirement is helpful to unrepresented tenants because the judge will explain any legalese in the agreement before "so-ordering" it, to make sure that you understand its legal consequences.



Give up as little as possible. Some landlord's attorneys will attempt to get you to waive some of your defenses and give up all your counterclaims as a condition to entering into a settlement agreement. They do this by adding paragraphs like this to the agreement: "Respondent [that's you] consents to the jurisdiction of this Court, and waives any and all jurisdictional defenses and withdraws its counterclaims." If your answer didn't raise any technical defenses or assert any counterclaims (see Section J, above), it doesn't matter. You're not giving anything up. But if you made a counterclaim for a rent abatement, or triple damages for a rent overcharge, for instance, try to settle the case without giving these up. That preserves your right to pursue the claims later, in small claims court, for instance.

There is no official form that a stipulation of settlement must follow. It is up to the landlord and tenant to craft the words. A Sample Stipulation of Settlement Nonpayment Proceeding is shown below. The case's full caption must appear at the top left side of the document, and the index number should appear on the upper right-hand side. In addition, the stipulation must be dated and signed by you and the landlord (or your duly authorized agents or lawyers).

N. Trial and Judgment

If you can't work out a settlement with the landlord, your case must go to trial—either before a jury (if you so request, assuming your lease or rental agreement doesn't include a jury waiver clause) or a judge. While trial practice is beyond the scope of this book, here is an overview of the trial process in a nonpayment proceeding. Throughout this section, we assume that the landlord is represented by counsel, which is usually the case.

1. Selecting a Jury

If you demanded a jury trial, you and the landlord's attorney must select a panel of six persons from an array of citizens who have been summoned to jury duty. Each of you may ask questions of potential jurors during a process called the "voir dire." The elaborate system for challenging and objecting to potential jurors is beyond the scope of this book. Chapter 19 suggests legal resources you may turn to for more information. For more details on your right to a jury trial in eviction cases, see Section I2, above.

2. Opening and Closing Statements

An opening statement gives you and the landlord's attorney an opportunity, at the very beginning of the trial, to acquaint the jury (or a judge in a non-jury trial) with the issues and the evidence you intend to present. In non-jury trials, judges sometimes skip opening statements and familiarize themselves with the issues by reviewing the landlord's petition and the tenant's answer.

After the landlord and you present your case through witnesses, documents, photos and other evidence (described below), you may make a closing statement, called a "summation." That's your time to

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

123 Realty Company, Inc.,
Petitioner-Landlord,
-against-

**STIPULATION OF SETTLEMENT
NONPAYMENT PROCEEDING**

Index No. (L&T) 76532/03

Penny L. Perkins,
123 Delancey St, Apt. 3-A
New York, NY 10002

Respondent-Tenant.

It is hereby stipulated and agreed to between the parties that this proceeding is settled as follows:

1. **Possessory judgment.** Tenant consents to a final judgment of possession in favor of the Landlord. A warrant of eviction shall be issued immediately but execution of the warrant of eviction shall be stayed according to the terms and conditions listed below.

2. **Statement of rent due.** The Petition is amended to include all rent owed by the tenant to the landlord through the date of this stipulation which totals \$3,250.00, representing unpaid rent for the months of January and February, 200x, at a rate of \$1,625 per month.

3. **Money judgment.** Tenant consents to a money judgment in favor of the landlord in the amount of \$3,250.00, representing unpaid rent for the months of January and February, 200x, at a rate of \$1,625.00 per month.

4. **Payment schedule.** Tenant agrees to pay the rent due (\$3,250.00) to the Landlord, by U.S. Postal Money Order, in three installments, as follows:

Installment #1:	\$1,250	Due on the signing of this agreement;
Installment #2:	\$1,000	Due February 22, 200x;
Installment #3:	\$1,000	Due the later of: Feb. 28, 200x, or five days after landlord completes the repairs listed in paragraph 6, below.

All payments shall be made by certified check or money order payable to 123 Realty Company and must be received by 5:00 p.m. on the due date at the office of the landlord, 225 Broadway, 8th Floor, New York, NY 10007.

5. **Tenant default.** In the event that the tenant fails to pay one or more of the installments according to the timetable in Paragraph 4 of this agreement, the warrant of eviction may be executed, without any further notice other than service of a Notice of Eviction by a City Marshal.

6. **Repairs by landlord.** Landlord agrees to repair the following conditions in the rental unit:

- Repair or replace broken window blind in east bedroom window
- Replace missing bathroom tiles right of shower head
- Repair buckled parquet floor tile in east corner of bedroom

7. **Access for Repairs.** Tenant agrees to provide access to the rental unit to Landlord's employees and/or contractors on Saturday, February 21, 200x, at 9:00 a.m., and, if necessary, Monday, February 23, 200x, at 9:00 a.m.

8. **Landlord's Default.** If the landlord fails to make all or any the repairs listed in paragraph 6, above, the tenant shall not be required to make Installment #3 under the payment schedule described in paragraph 4.

9. **Termination of proceeding.** Upon tenant's payment of all rent installments listed in paragraph 4, this proceeding shall be deemed discontinued with prejudice.

Dated: _____, 200x

Signed _____, Tenant

Signed _____, Landlord

poke holes in the landlord's case and reiterate your position.

3. Landlord's Case

The trial begins with the landlord's case. To win, the landlord must prove the following elements:

- that the petitioner in the nonpayment proceeding is the owner, landlord, overtenant or other person or entity authorized under law to bring a summary proceeding
- you are the tenant in "possession" (occupancy) of the premises
- you owe rent
- the rent you owe was properly demanded by the landlord at least three days prior to the start of the eviction proceeding, and
- you were properly served with a notice of petition and petition.



If the property is a multiple dwelling, the landlord will also need to show that the building is properly registered with the New York City Office of Code Enforcement.



If the unit is regulated, the landlord must also show that the amount of rent demanded does not exceed the rent registered with the DHCR.

To prove these elements, the landlord's attorney may put witnesses, such as your landlord or manager, on the witness stand and ask them questions about the property's ownership, the rent due under your lease or rental agreement, etc. Unless you understand the rules of evidence, making objections to these questions is probably not a good idea. (You may end up annoying the judge.) Listen carefully to the witnesses' answers. You get the chance to cross-examine each witness by asking follow-up questions about their testimony. The landlord may also introduce documents, such as a written rent demand, your lease, rent ledgers and affidavits of service. You are entitled to examine these documents before they are admitted into evidence for authenticity. If a document is not an original or a copy certified by a government records officer as true, point this out to the judge.

If the landlord fails to prove any of the elements listed above, you may ask the judge to dismiss the

case. Otherwise, it's up to you to prove that you had a legal justification for not paying rent.

Be aware that tenants may also be called to the stand by the landlord's attorney—for example, to authenticate a lease, rental agreement or letter you signed. If you testify on your own behalf, say about conditions in the apartment, you may be cross-examined by the landlord's attorney about what you said.

4. Tenant's Case

You're up next. You must prove that you have one or more legal excuses (affirmative defenses) to withhold rent. You may put witnesses on the stand and ask them questions about conditions at your apartment, for instance. You may also ask the court to accept your photos, correspondence with the landlord, rent receipts, violations or inspection reports—basically all you've got. See Section I, above.

Judges don't expect tenants who represent themselves to follow the strict rules that apply to the introduction of evidence. But you should expect the landlord's attorney to make objections to your questioning of witnesses and to try to persuade the judge to exclude as much of your documentary evidence as possible. The landlord's attorney may also cross-examine any witnesses you bring to court. If you're confused, look to the judge for guidance.

5. Judgment

A judgment is the final resolution of the dispute by the judge. The judge may issue a judgment dismissing the case or granting a money judgment and possessory judgment in favor of one party. If you win a possessory judgment, you have the right to stay in your apartment. If your landlord wins a possessory judgment, the landlord has the right to retake possession by evicting you.

The judge may dismiss the case if the landlord has failed to follow a critical technicality (such as properly serving you with the notice of petition or petition) or if the landlord fails to prove a required element of the case. That means that the case is thrown out and you can stay in your apartment. If the judge dismisses the case "without prejudice," which is most common, the landlord may begin all over again and with a new nonpayment proceeding against you.

right away, seeking the same rent. If the case is dismissed “with prejudice,” that means that the landlord may not again sue you for the rent sought in the petition. This happens far less often.

If the case ends with you owing the landlord all or some of the rent, the judge issues a money judgment for that amount, plus interest that runs from the date the proceeding is commenced until the judgment is paid. If you or the landlord refuse to pay the money judgment voluntarily, a marshal, sheriff or constable may enforce the judgment by freezing bank accounts, garnishing wages and seizing assets.

If the landlord wins a money judgment for all or some of the rent due, the court will also issue a possessory judgment in favor of the landlord. If you fail to pay the money judgment within five days, the landlord may ask the court to issue a warrant of eviction to remove you from the rental unit. If you pay the judgment in full within five days (or any time before the court issues a warrant of eviction), you redeem your tenancy and you can't be evicted. You may pay the money judgment directly to the

landlord, or if the landlord refuses, to the clerk of the court that issued the judgment.

Once the court issues a warrant of eviction, the landlord-tenant relationship ends and you may be evicted on as little as 72 hours' notice. For more information on the notice of eviction, see Chapter 16.



Military tenants have special rights. Under the Soldiers' and Sailors' Civil Relief Acts of 1940 (50 U.S.C. § 501 and following), a court may not enter a default judgment against a tenant in the military. In addition, persons who are dependent upon a military service member are protected from eviction. Bring the military or dependent ID card, a copy of the service member's order, or telegram calling you or them to active duty when you go to court to answer the petition. If you do not have these documents, you can contact the Fiscal Officer of the service member's unit or call these numbers for assistance: Army Emergency Relief: 718-630-4552 or 4710; Navy and Marines Emergency Relief: 718-876-6245 or 6246; Air Force Family Aid 609-724-3154; Reserve Civilian Job Rights: 800-336-4590. ■



Responding to Termination Notices and Holdover Eviction Papers

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Getting hit with a termination or eviction notice can be traumatic, but don't panic. Your landlord can't terminate your lease on a whim or for purely economic reasons. He must have a legal justification for doing so. This would typically be the case if you violate one of the following:

- an important term of your lease—for example, by keeping a dog contrary to a no-pets clause
- a law or ordinance—for instance, if you use the property for drug sales or other illegal purposes, or
- a rent regulation—for example, by failing to use a rent-stabilized or rent-controlled apartment as a primary residence.

It can come as a shock to learn that your landlord can prematurely end your lease or rent-regulated tenancy. Fortunately, landlords may not use self-help to evict residential tenants. The landlord must follow very specific rules and issue detailed notices to terminate a fixed-term or rent-regulated tenancy. If you do not move out when your tenancy ends, the landlord still may not act to remove you. He must go to court to obtain a judgment ordering your eviction. Only a marshal, sheriff or other law officer may carry out an eviction.



New York City's "Unlawful Evictions Law" protects tenants from illegal lockouts. (NYC

Admin. Code Sec. 26-521 and following.) The Unlawful Evictions Law prohibits landlords, managers or supers from engaging in any conduct designed to force a tenant or occupant to vacate their apartment, including interrupting or discontinuing essential services, using or threatening force, removing the tenant's possessions, removing the entrance door to the apartment or changing, plugging or removing the door lock. This law applies to all regulated and non-regulated tenants as well as to non-tenant occupants, such as subtenants, roommates and relatives, who have occupied a New York City apartment for 30 consecutive days or longer. Violators are subject to civil and criminal penalties. For more information, see Chapter 11, Section C.

This chapter is designed to help you evaluate your legal options when faced with a notice of default, termination or eviction. Your first step is to identify the type of legal notice you've received, so you can understand what it means and how much time you have to act. Section B, below, explains the legal significance of four types of legal notices:

- notice to cure (also known as a default notice)
- notice of termination, which may include a notice of non-renewal
- notice of petition and petition holdover, and
- notice of eviction.

To help with identification, we've included sample forms that you can compare to the notice you've received. Other chapters cover additional notices. A notice to terminate a month-to-month tenancy is in Chapter 14. And a notice for failure to pay rent on time—called a rent demand—is covered in Chapter 15.

Your next step is to determine whether your landlord has any legal justification for attempting to terminate your tenancy. Just because you've received an official-looking notice from your landlord (or from your landlord's attorney), doesn't necessarily mean that it's time to pack your bags. Landlords have been known to attempt to terminate a tenancy without legal justification. Sections C, D and E of this chapter examine the legal justifications for prematurely ending a tenancy, such as violating a lease clause prohibiting pets. Section F looks at a few additional grounds upon which rent-stabilized and rent-controlled tenancies may be terminated, such as failure to use your apartment as your primary residence.

Once you've figured out whether your landlord may legally terminate your tenancy, it's time to examine your legal options. Section G discusses available alternatives, which you'll choose depending on the facts of your situation.

If you elect to appear in court and fight for your tenancy, you'll need to understand how eviction proceedings operate and what you need to do to persuade a judge that your landlord's case is bogus or simply wrong. Section H looks at the notice of petition and petition holdover—the legal papers that start a holdover eviction proceeding. Sections I and J explain how to file an answer responding to the landlord's claims.

Section K helps prepare you for your first day in court. Most eviction proceedings are settled by way of a "stipulation of settlement," an agreement hammered out in court between you and your landlord. We discuss the essential elements of a stipulation in Section L, as well as your final right to cure a lease violation. If you can't settle a case with your landlord, it will go to trial. While trial procedure is beyond the scope of this book, Section M presents an overview, including how eviction proceedings culminate in a

judgment of possession. Section N covers court orders (stays) that freeze a pending eviction proceeding. The chapter concludes with a look at the notice of eviction (Section O, below).



Related topics covered in this book include:

- Default and termination provisions and notice requirements in leases: Chapter 2
- Understanding rent control and rent stabilization laws, including what units are covered: Chapter 4
- Fighting landlord discrimination, retaliation and harassment: Chapter 11
- Responding to termination notices ending a month-to-month tenancy: Chapter 14
- Responding to rent demands and nonpayment petitions and service requirements for termination and eviction notices: Chapter 15
- Glossary of termination and eviction terms: Chapter 15
- Getting your security deposit back: Chapter 18
- Finding a lawyer and conducting your own legal research: Chapter 19.



If your landlord is attempting to terminate your tenancy or evict you in connection with a plan to convert the property to cooperative or condominium ownership, contact the Real Estate Financing Bureau of the Attorney General's Office for advice on your legal rights. Contact information appears in Appendix A at the back of this book.



Model Letters and Sample Forms Included in This Chapter

- Notice to Cure
- Notice of Termination
- Notice of Non-Renewal
- Notice of Petition Holdover
- Answer



Beware of discriminatory and retaliatory termination. A landlord may not legally terminate your tenancy in retaliation for your having exercised your legal rights as a tenant, such as the right to file a complaint with a housing agency, to institute a lawsuit or proceeding against the landlord or to join a tenants'

association. Nor may your landlord terminate your tenancy because of race, religion, sex, marital status, having children, disability or other discriminatory reasons. See Section G2 of this chapter for an overview of these issues and Chapter 11 for details on illegal retaliation and a full discussion on discriminatory housing practices.

A. Do You Need a Lawyer in a Holdover Proceeding?

Most landlords are represented by attorneys in holdover proceedings. The best way to level the playing field is to have your own lawyer. But for many, the cost of hiring a lawyer is prohibitive. As a result, some tenants choose to go it alone and represent themselves in holdover cases. There are times when you will want to seriously consider legal counsel—for example, if your case is legally and factually complicated or you have a long-term lease on a very desirable unit. See Chapter 15, Section B, for details on when it makes sense to hire a lawyer for eviction defense. Also, see Chapter 19 which explains how to find and work with a lawyer.

Where to Find Definitions of Holdover and Eviction Terms

Throughout this chapter, we refer to various notices, forms and legal phrases that relate to terminations and holdover eviction proceedings, such as affirmative defense or stipulation of settlement. If you come across a term you don't understand as you read through this chapter, refer to the glossary at the beginning of Chapter 15 for help. It's called "Learning the Lingo: A Glossary of Rent Demands, Termination and Eviction Terms."

B. Termination and Eviction Notices: A Primer

One very important rule cuts across all other rules in an eviction case. The landlord must strictly comply with all legal requirements, especially when it comes to preparing and serving termination notices and eviction papers. This is the price the landlord pays for a special, quick procedure and reflects the serious-

ness of the matter, which seeks to deprive you of your home.

The general rule is that termination notices may come from the landlord, her manager or attorney. If you have a lease or rental agreement and it requires that notices come from the landlord “personally,” then only the landlord can issue the notice. The landlord can always authorize someone else to issue notices on her behalf, as long as you receive proof of that person’s authority to bind the landlord. A signed statement from the landlord that’s attached to the notice is sufficient proof of authority.

Here are brief descriptions of the key legal notices referred to in this chapter and an overview of the eviction process. We also include sample forms here and explain general notice procedures. Following sections explain how to respond to different types of notices, depending on your situation.



Serving a notice on a Sunday is prohibited. (GBL § 11.) Under New York law, the service of any legal process on a Sunday, including a notice to cure, notice of non-renewal, notice of termination, notice of petition or notice of eviction, is void. The rationale is secular, not religious. The legislature has deemed Sunday a “day of rest” for the general public. If you are served with a notice on a Sunday, it is technically invalid. Nevertheless, don’t ignore it. If you decide to fight your termination in court, point out Sunday service of the notice to the judge or court clerk. Your case may be dismissed.

1. Notice to Cure (Default Notice)

A notice to cure (also known as a default notice) is a required first step to terminate a tenancy for a violation of a lease or rental agreement clause, such as a “residential use only” clause. It is a legal warning that tells you how you’re violating the lease, law or rent regulation and states that the landlord will terminate the tenancy if you don’t correct or “cure” the problem within a given time period (usually seven to ten days, depending on the terms of your lease or rental agreement or the rent regulations that apply to your unit). If you cure the violation—say, by removing an illegal subtenant or unauthorized pet—your tenancy may not be terminated. But if you ignore a notice to cure, your landlord may issue a termination notice at the end of the cure time period.

A sample notice to cure (in this case, for failure to provide access to the landlord) is shown below. Keep in mind that there is no one official form. The words on any notice you receive will be different, since they identify the tenant, the premises, the nature of the violation and a suggested cure, which are unique in every case.

There are several points that the notice to cure must cover to be legally sufficient. They are:

- the address of the rental unit
- a description of the tenancy violation and a citation to the lease clause or rent regulation that the tenant is allegedly violating
- a statement directing the tenant to “cure,” or correct, the violation within a specified time period, and
- a warning that the landlord will terminate the tenancy if the tenant fails to cure the default in the time provided in the notice.

Later sections in this chapter, including Section C2, provide details on the notice to cure.



Notice to Cure Lease Violation

(Failure to Provide Access to Landlord)

To: Daniel and Judith Berman, "Tenants," and to all persons occupying the Premises described below.

Re: All rooms, Apartment 7-B, in the building known as and located at 43 East 74th Street, New York, NY 10021 (the "Premises").

PLEASE TAKE NOTICE, that you are violating a substantial obligation of your lease dated February 1, 200x, by and between Daniel and Judith Berman, as Tenants, and East Side Realty as Landlord (hereinafter, the "Lease"). Specifically, you have failed and refused to provide access to the Premises to the Landlord for purposes of replacing the heating valve in the living room of the Premises, despite repeated oral and written requests from the Landlord to do so. Your continued refusal to provide access to the Premises to the Landlord for the purposes of making repairs and improvements violates Clause 15 of the Lease.

PLEASE TAKE FURTHER NOTICE, that you are required to cure the violation within ten (10) days from the date of this notice by contacting the Landlord at the number listed below to make an appointment for access to the Premises for as long as may be necessary to replace the living room heating valve.

PLEASE TAKE FURTHER NOTICE, that if you fail to cure the violation on or before March 15, 200x, that being at least ten (10) days from the date of this Notice, your tenancy will be terminated and you will be required to remove from and surrender possession of the Premises to the Landlord.

Dated: February 20, 200x

By: *Rita L. Preen*

Rita L. Preen, President,
East Side Realty, Inc.
Owner and Landlord
255 East 75th Street
New York, NY 10023
(212) 555-1212

2. Notice of Termination (Notice to Vacate and Surrender)

A notice of termination, (also known as a notice to vacate and surrender) ends your tenancy as of a particular date, and specifies that if you don't move out by that date, an eviction proceeding will be started against you. The amount of time the notice gives you varies, depending on the terms of your lease, the reason for termination and, in the case of rent-regulated tenants, the form of rent regulation. The notice cites the reason for termination, such as a violation of a specific lease obligation or rent regulation. In some cases, a landlord will first serve you a notice to cure; in other instances, such as drug dealing or failing to renew a rent-stabilized lease, a landlord may skip the notice to cure and immediately serve a termination notice. If you don't move out by the time the termination notice expires, the landlord may begin a holdover eviction proceeding to remove you from the rental unit, as described in Section H, below.

To be legally effective, a termination notice must be timely, definite and unequivocal. To meet these criteria, the notice you receive must do all of the following:

- state the address of the rental unit
- provide a reason for the termination of the tenancy
- give a citation to the lease clause or law claimed to be violated and, if the unit is rent-controlled or rent-stabilized, a cite for the specific rent law authorizing termination
- if a notice to cure was previously served, state that the violation has continued beyond the cure
- give a specific date when the tenancy will terminate and the tenant must move out, and
- warn that the landlord will start an eviction proceeding if the tenant fails to move out by the termination date.

A sample termination notice, based on a rent-stabilized tenant's violation of a no-pets clause, is shown below. The words on any notice you receive will be different, since they identify the tenant, the premises, the reason for the termination and the termination date, which are unique in every case.



Chapter 14 covers notices of termination for month-to-month tenancies.

Termination notices ending fixed-term and rent regulated tenants are far more detailed than the relatively simple notice required to terminate a month-to-month tenancy.

Notice of Termination

(Lease Violation by Rent Stabilized Tenant)

To: Sally Kalimian, "Tenant," and to all persons occupying the Premises described below

Premises: All rooms, Apartment 5-C, 300 Fifth Avenue, New York, NY 10001 (the "Premises").

Re: Lease dated June 1, 200x, between Sally Kalimian, as Tenant, and Limestone Realty, Landlord's predecessor (the "Lease").

PLEASE TAKE NOTICE, that pursuant to New York City Rent Stabilization Code Section 2524.3(a) and Article 11, Rule 9, of the Lease, the Landlord elects to terminate your tenancy on the grounds that you are violating a substantial obligation of your tenancy, in that, without the prior written consent of the Landlord or Landlord's Predecessor, you are harboring a dog in the premises. Such conduct has continued beyond the cure period set in the notice to cure previously sent to you, a copy of which is annexed hereto, along with proof of service, and made a part of this notice.

PLEASE TAKE FURTHER NOTICE, that you are hereby required to quit, vacate and surrender the Premises on or before September 30, 200x, that being more than seven days' after the service of this notice upon you, pursuant to the terms of your lease and applicable law.

PLEASE TAKE FURTHER NOTICE, that if you fail to vacate or surrender the premises, the landlord will commence summary proceedings to evict you.

Dated: September 20, 200x

By: *Eric Corde*

Eric Corde, Secretary,
Black Acre Realty, Inc., Owner and Landlord
Penthouse A
300 Fifth Avenue
New York, NY 10001
212-555-1212

3. Notice of Non-Renewal for Rent-Stabilized Tenants

If you're a rent-stabilized tenant, you may get a notice of non-renewal informing you that the landlord does not intend to renew your current lease, claiming either that you don't occupy the apartment as your primary residence, or that your landlord needs your apartment for herself or for a family member. (New York rent regulations permit landlords to refuse to renew leases on a few other narrow grounds as well, as discussed in Section F, below.) This notice is often combined in one form with the termination notice. A notice of non-renewal must be served during a "window period" prior to the expiration of your current lease. This window period may range from 90 to 120 days or from 90 to 150 days, depending on where you live; this is the time that you would ordinarily be offered a renewal lease as explained in Chapter 2, Section E.

To be legally effective, a notice of non-renewal must be timely, definite and unequivocal. To meet these criteria, the notice you receive must do all of the following:

- State the full address of the apartment.
- Provide a reason for the non-renewal of the tenancy, for instance, that the rental unit is not being occupied as the tenant's primary residence ("nonprimary residence").
- State facts that support or establish the reason for non-renewal. For example, for nonprimary residence the facts may include the tenant's ownership of a home at another address and/or a driver's license, vehicle registration or voter registration listing another address.
- Give a citation to the rent regulation authorizing non-renewal.
- If the termination notice is combined with the notice of non-renewal, it must additionally specify a date by which the tenant must move out and a warning that the landlord will start an eviction proceeding if the tenant stays past the termination date.

A sample notice of non-renewal is shown below. The precise words on any notice you receive will be different, since they identify the tenant, the premises, and the grounds for non-renewal, which are unique in every case.

Notice of Non-Renewal

To: Bernadette Harrigan,

"Tenant," and to all persons occupying the Premises described below.

Premises: Apartment 3-A

84-44 Cuthbert Road

Kew Gardens, New York 11415 (the "Premises").

Re: Lease dated November 1, 1998 between Bernadette Harrigan

_____, as Tenant,

and Juan Baez

_____, "Landlord", as most recently renewed

by renewal agreement dated November 1, 200X (the "Lease").

PLEASE TAKE NOTICE, that pursuant to New York City Rent Stabilization Code (9 NYCRR)
§ 2524.4(c),

the Landlord does not intend to renew your lease for the Premises, which expires on October 31,
200X, because the Premises are not being occupied as your primary residence

PLEASE TAKE FURTHER NOTICE, that the Landlord intends to commence an action or proceeding
seeking to recover possession of the subject premises on the ground that the Premises are not being
occupied as your primary residence.

PLEASE TAKE FURTHER NOTICE, that in the event you fail to vacate or surrender possession of the
subject premises on or before October 31, 200X, that being at least
thirty (30) days after the service of this notice upon you, the Landlord
intends to commence an action or proceeding to recover possession of the subject premises on the
grounds that they are not being occupied by you as your primary residence.

PLEASE TAKE FURTHER NOTICE, that the Landlord reasonably believes the facts necessary to
establish the existence of your non-primary residence

_____, include, but are not limited to, the
following, and such other facts as may be ascertained in the course of discovery proceedings:

1. You maintain your primary residence at a dwelling other than the subject premises and/or

2. You principally or primarily occupy the premises known as and located at 12 Tomahawk Drive,
Marlton, NJ 08053, and/or

3. You hold a New Jersey driver's license reciting 12 Tomahawk Drive, Marlton, NJ 08053, as your residence and/or
4. You maintain a telephone listing reciting 12 Tomahawk Drive, Marlton, NJ 08053, as your residence address and/or
5. Voting records reflect 12 Tomahawk Drive, Marlton, NJ 08053, as your residence address and/or
6. Building personnel have not seen you at the subject premises on a regular basis, since on or about January 1, 200X, and/or
7. The subject premises are actually being occupied by Barry Bittlesen.
8. _____

PLEASE TAKE FURTHER NOTICE, that this notice is being served upon you in compliance with the terms of your Lease and applicable provisions of law.

<u>August 1, 200X</u>	<u>Juan Baez</u>
Date	Signature
	<u>Juan Baez, General Partner</u>
	Name and Title of Signer
	<u>Baez Holdings, LLC, Landlord</u>
	Address
	<u>3 Hanover Square</u>
	<u>New York, NY 10004</u>
	<u>(212) 555-1212</u>
	Phone

4. Notice of Petition Holdover

A landlord may begin a “holdover” eviction proceeding against a tenant who doesn’t move out by the deadline set in a termination notice, or who stays after the expiration date set in a lease or rental agreement. Holdover eviction proceedings may also be started against a tenant who routinely uses the rental unit for an illegal or immoral purpose, without any prior cure or termination notice. As explained in Section C, below, one instance usually isn’t enough to start an eviction.

To begin a holdover eviction proceeding, your landlord will need to serve you with eviction papers—a notice of petition holdover and a petition holdover. These papers may be served the very next day after a lease, rental agreement or termination notice expires. A notice of petition holdover is a legal notice advising you that your landlord is starting an eviction proceeding against you and directing you to go to court on a specified date and time to answer the petition. Attached to the notice is a petition holdover, a written application from your landlord stating why (the grounds) your tenancy was terminated and asking the court to remove you and restore the landlord to legal possession of the rental unit. The petition may also seek a money judgment for “use and occupancy” (that’s rent from the termination date to the day you move out or are evicted) and for the landlord’s attorney fees.

A sample notice of petition holdover (“Notice of Petition”) is shown below (in this case, for a New York City holdover proceeding). Notices of petition for holdover proceedings outside New York City look similar, but delete the last paragraph, since the rent deposit law only applies in New York City. The words on an actual notice of petition will be different, since they identify the tenant, the premises, the nature of the violation and a suggested cure, which are unique in every case. Section H, below, provides details on the notice of petition holdover.



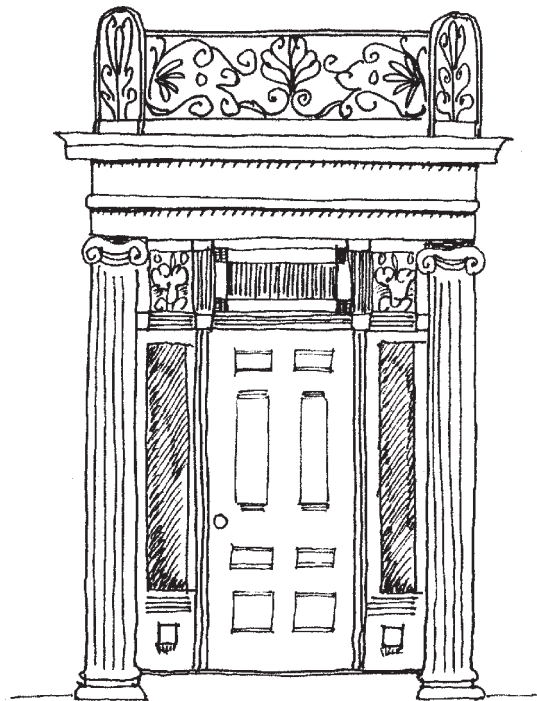
The landlord may seek a deposit of rent and/or use and occupancy upon your request for a second adjournment of the proceeding. We discuss the rent deposit law referred to in the last paragraph of the notice of petition in Chapter 15, Section K.

5. Answer

A tenant’s answer is a response to the claims in the landlord’s petition that you have done (or not done) something that justifies your eviction. An answer also raises tenant defenses to the proceeding and counter-claims against the landlord for items such as attorney fees. Sample answer forms are shown in Section J, below.

6. Notice of Eviction

Before a law enforcement officer, such as a marshal or sheriff, may evict you, you must first receive a notice of eviction, also called a warrant of eviction. The notice advises you that if you do not vacate your rental unit within the notice period, you will be evicted. If the notice is personally delivered to you, you get 72 hours’ notice, and you may be evicted on the fourth day after delivery, or on any business day after that. If the notice is taped to your front door and mailed to you, you may be evicted on the sixth business day after the date of the notice, or on any business day thereafter. See Section O, below, for details on the warrant of eviction.



CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Tower 50 Realty Company
126 East 50th Street
New York, NY 10022

Petitioner-Landlord,

-against-

Peter A. Lowenstein and Daniel Gray
126 East 50th Street, Apt. 7-B
New York, NY 10022

Respondents-Tenants.

NOTICE OF PETITION

Residential

Index No. (L & T) 10712/03

To the Respondents Peter A. Lowenstein and Daniel Gray, above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that a hearing at which you must appear will be held at the Civil Court of the City of New York, Housing Part to be held at 111 Centre Street, County of New York, on the 21st day of March, 200x, at 9:30 A.M. which prays for a final judgment of eviction awarding to the Petitioner the possession of premises designated and described as follows: all rooms on the seventh floor, Apartment No. 7-B, 125 East 50th Street, City of New York, County of New York, and further granting to the Petitioner such other and further relief as is demanded in the Petition which you must answer.

TAKE NOTICE, also that a demand is made in the Petition for judgment against you, the Respondent, for the sum of \$1,990.00, with interest thereon from February 28, 200x.

TAKE NOTICE that your answer may set forth any defense or counterclaim you may have against the Petitioner, unless such defense or counterclaim is precluded by law or agreement of the parties.

TAKE NOTICE also that if you should fail at such time to interpose and establish any defense that you may have to the allegations of the Petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

TAKE NOTICE, that your failure to appear and answer may result in a final judgment of eviction by default for the Petitioner in the amount demanded in the Petition.

TAKE NOTICE that under Section 745 of the Real Property Actions and Proceedings Law, you may be required by the Court to make a deposit of use and occupancy, or payment of use and occupancy to the petitioner, upon your second request for an adjournment or if the proceeding is not settled or a final determination has not been made by the Court within 30 days of the first court appearance. Failure to comply with an initial rent deposit or payment order may result in the entry of a final judgment against you without a trial. Failure to make subsequent required deposits or payments may result in an immediate trial on the issues raised in your answer.

Dated: March 5, 200x

County of New York, the 5th day of March, 200X.

Signed: **Clerk of the Civil Court of the City of New York**

Benson & Batstow, LLP
225 Broadway
New York, NY 10007
(212) 555-1212

How Holdover Eviction Cases Are Resolved

To be entitled to a judgment of possession—that is, to evict you—your landlord must be able to demonstrate to a judge that you no longer have any legal right to occupy the rental unit. The landlord must show that your lease for the rental unit expired, or that he had a legal reason to terminate your tenancy and that he followed the right procedure. The judge will examine the legal and factual sufficiency of the termination notices (as well as the notice to cure or notice of non-renewal, where applicable). In addition, the court will hear your defenses, which are legal reasons why the tenancy should not be terminated.

If all goes well, the judge will dismiss the proceeding against you. But if you lose based on your defense, or if you don't show up in court (or fail to send a lawyer or other person who has written authorization to represent you), the judge will issue a judgment of possession in the landlord's favor. That permits the court to issue a warrant of eviction—the paper that directs a marshal, sheriff or town constable to remove you and your family or roommates from the premises. (RPAPL § 749 (1).) The issuance of the warrant by the court officially cancels the tenancy and ends the landlord-tenant relationship between you and your landlord.

Before carrying out the eviction, the marshal, sheriff or constable will serve you with a notice of eviction giving you at least 72 hours' notice of the impending eviction. Only after the notice period ends may the eviction be carried out.

In some areas of New York, this process can take as little as three or four weeks. In New York City, however, the wheels of justice turn far slower, due to the high volume of cases heard there. As a result, an eviction usually won't take place for at least six weeks after service of the landlord's eviction papers. Tenants who are savvy about the legal system have been known to forestall their evictions for months by repeatedly requesting adjournments, raising hyper-technical and procedural issues and filing post-judgment "orders to show cause" to postpone their evictions.



The New York City Housing Court offers several services to help tenants with eviction cases. See "Tenant Help Is Available in the NYC Housing Court," in Chapter 15, Section E, for details.

C. Termination for Violating the Lease

Most leases and rental agreements have a provision that gives the landlord a right to end the tenancy if you violate a lease clause—that is, any tenant promise or obligation. But since leases and rental agreements include a variety of promises and obligations, courts are reluctant to permit termination for a mere technical breach or minor violation.



Rent stabilization and rent control laws also permit landlords to terminate the tenancy in the event that the tenant violates a substantial obligation of the tenancy. These include tenant obligations spelled out in a tenant's current lease or, in the case of most rent-controlled tenants, in the expired lease. Before the landlord may evict, a rent-regulated tenant must receive a ten-day notice to cure the violation. If the tenant refuses to remedy the violation, the landlord may issue a one-month notice of termination, for rent-controlled tenants, and a shorter, seven-day notice of termination for rent-stabilized tenants.

1. Violation Must Be Substantial, Not Minor

To justify termination, the tenant must significantly violate a "substantial obligation" of the tenancy. (*Park West Village v. Lewis*, 62 N.Y.2d 431, 477 N.Y.S.2d 124, 465 N.E.2d 844 (1984).) What's substantial? If the lease expressly states that a certain violation will constitute a substantial obligation of the tenancy, that agreement will usually be enforced. Even when a specific lease term isn't expressly labeled substantial, a breach will be considered substantial if the violation actually harms, damages or causes significant injury to the landlord or to the landlord's property. (*Park East Land Corp. v. Finkelstein*, 299 N.Y. 70, 85 N.E. 869 (1949).)

The following sections describe examples of substantial obligations taken from New York court cases.



Your landlord may not automatically end your lease for nonpayment of rent.

Residential lease clauses that call for automatic termination of the lease for nonpayment of rent are not enforceable in New York. (*Park Summit Realty Corp. v. Frank*, 56 N.Y.2d 1025, 453 N.Y.S.2d 643, 439 N.E.2d 358 (1982).) If you don't pay rent, the landlord must make a legal rent demand requiring you to pay a specified amount of rent within a certain time period (usually, three days) or vacate the unit. If you fail to pay rent or move within the time demanded, the landlord may bring a nonpayment eviction proceeding against you. Chapter 15 looks closely at this procedure and explains your legal options when you are faced with a rent demand.

a. Failing to Provide Access to the Landlord

A clause providing the landlord with a right of entry to inspect the rental unit, make repairs and/or show the unit to prospective tenants and mortgagees is a substantial obligation of the lease. For instance, a tenant who refused the landlord's repeated requests for access to install new windows was found by an appeals court to have breached a substantial obligation of the lease and could be evicted. (*Weiner Equities Associates v. Stambler*, NYLJ, 2/21/91, p. 28, col. 3 (App. Term, 2d & 11th Jud. Dists.).)

Your lease details your landlord's right of entry. See Chapter 8 for more details on access issues, and Section F1, below, for issues specific to rent-regulated tenants.

b. Making Alterations Without Permission

Violating an express promise not to make alterations to the rental unit without the landlord's consent is a substantial lease violation. (*Rumiche Corp. v. Eisenreich*, 40 N.Y.2d 174, 386 N.Y.S.2d 208, 352 N.E.2d 125 (1976).) However, alterations that are non-structural, easily removable and consistent with the residential use of the premises may not be substantial enough to justify a tenancy's forfeiture; it depends on the particular facts and circumstances.

Alterations that courts have characterized as structural include the installation or removal of windows or of partition walls and the reconstruction of ceilings. Non-structural alterations that don't significantly violate the no-alterations clause include the installation of a mirror, placing a picture on the wall or installing wall-to-wall carpeting. Most of the time, a tenant's

replacement of old or defective bathroom vanities, sinks, stoves, refrigerators, kitchen cabinets and linoleum are considered non-structural alterations and do not significantly violate a no-alterations clause, *unless* the replacement causes permanent or lasting damage to the property. (*Mengoni v. Passy*, NYLJ, 11/28/97, p. 28, col. 3 (App.Term, 1st Dep't).)

EXAMPLE: A Manhattan tenant replaced a 27-year old stove with a new stove. The landlord terminated the tenancy on the ground that the tenant violated the no-alterations clause in the lease, and sued to evict the tenant. An appeals court refused to allow the tenancy to be terminated because the replacement of the stove was merely a technical violation of the no-alterations clause of the lease, as opposed to a significant violation of a substantial lease obligation. (*Ram I LLC v. Stuart*, NYLJ 4/25/97, p. 25, col. 2, (App.Term, 1st Dep't) aff'd 248 A.D.2d 255, 668 N.Y.S.2d 888 (1st Dep't 1998).)

Courts are more likely, however, to find that a violation has occurred when the item being replaced has real value—in the example, above, chances are the stove was not a vintage Wedgwood. One court has ruled that a tenant's replacement of a refrigerator and kitchen cabinets, when both were in good condition, constituted a substantial violation of the lease's no-alterations clause. (*Britton v. Yazicioglu*, 190 A.D.2d 734, 592 N.Y.S.2d 737 (1st Dep't 1993).) Tenants who install fixtures and appliances always run the risk that the junker they despise is actually the landlord's prized heirloom.

Chapter 6 has more information on requesting permission from your landlord to make improvements and alterations.

c. Failing to Provide a Duplicate Key

A lease provision that requires you to give the landlord a duplicate key to any privately installed apartment door lock is a substantial obligation. (*Lavanant v. Lovelace*, 71 Misc.2d 974, 337 N.Y.S.2d 962 (App. Term, 1st Dep't, 1972) aff'd 41 A.D.2d 905, 343 N.Y.S.2d 559 (1st Dep't 1973).) Buffalo and New York City tenants who live in buildings with three or more units are required by state law to give the landlord a duplicate key to any privately installed apartment door lock. (MDL § 51-c.)

d. Keeping a Pet in Violation of a No-Pets Clause

A lease provision that prohibits you from keeping a dog, cat or other pet in the rental unit without your landlord's permission is a substantial obligation of the tenancy. A tenant who harbors a pet in violation of a no-pets clause in the lease can be terminated. (*Rivercross Tenants Corp. v. Galateau*, NYLJ, 11/2/90, p. 21, col. 2 (App. Term, 1st Dep't.)) However, landlords must act promptly against tenants who keep pets. A delay could serve to waive, or nullify, the no-pets lease provision.



NYC and Westchester law requires landlords to object to pets within three months.

In buildings with three or more units, a "no-pets" provision in the lease is waived if the:

- tenant "openly and notoriously" keeps a pet for three months or more
- landlord or his agent, such as a manager, super, doorman or security guard knows about the pet, and
- landlord fails to object to the pet within that three-month period. (NYC Admin. Code § 27-2009.1, Westchester County Laws § 694.)

EXAMPLE: Sally moves in to her Brooklyn apartment on September 1 after signing a lease with a no-pets clause. On September 15, Sally brings home Daisy, her new puppy. Sally walks Daisy every morning, usually waving hello to the building's doorman as she passes through the lobby with her dog. While inspecting the building on the morning of January 15, the landlord sees Sally walking Daisy through the lobby. Later that day, Sally is served with a notice to cure, warning her that she's violating the no-pets provision in her lease.

Sally can safely ignore the notice. Why? The landlord knew about Daisy, but didn't object until more than three months after the pet moved in. The landlord is deemed to know about a dog if, for instance, you walk the pet every day openly and within sight of the landlord's doorman, manager or other building staff. (*Seward Park v. Cohen*, NYLJ, 12/19/01, p. 17, col. 2 (App. Div, 2nd Dep't)). If the landlord brings an eviction proceeding based on the pet, Sally may raise the New York City Administrative Code provision cited above in her answer to defeat the eviction.

Section I, below, explains how tenants may file an answer to a holdover eviction proceeding.

Some disabled tenants are legally entitled to keep service animals in spite of a no-pets clause, if the animal is necessary to the tenants' use and enjoyment of their home. We cover the rights of disabled tenants to keep service animals in Chapter 11, Section B.

e. Business Use of the Premises

A lease clause that restricts your use of the rental unit to residential or living purposes only is a substantial obligation. However, not every commercial and professional use of the rental property will constitute a significant violation of a residential-use-only clause. Courts usually examine whether the tenant's use is consistent with the residential character of the rental property.

For instance, a landlord successfully terminated the lease of a rent-stabilized tenant who conducted her entire psychiatric practice from her apartment. New York's highest court ruled that the tenant "departed significantly" from the lease requirement that the apartment be used solely for residential purposes. (*Park West Village v. Lewis*, 62 N.Y.2d 431, 477 N.Y.S.2d 124, 465 N.E.2d 844 (1984).) Because the tenant had specifically agreed to use and occupy the apartment only as a private dwelling, her professional use of the apartment was at odds with the residential character of the apartment complex in which the unit was located.

By contrast, a tenant who ran a small family daycare business in a rent-stabilized apartment did not significantly violate a substantial obligation of the lease, according to one New York City court. (*Sorkin v. Cross*, NYLJ, 4/24/96, p. 27, col. 3 (Civ. Ct. N.Y. County).) The tenant was registered with the city for the right to care for up to six children in the apartment. The judge hearing her eviction case said that the use of the apartment for childcare was consistent with the residential character of the apartment and that of the building, so the tenant didn't significantly violate the residential-use-only clause. Courts have also observed that the use of a rental unit for in-home family daycare furthers New York State public policy favoring greater availability of daycare and in-home family day care facilities. (*Haberman v. Gotbaum*, 698 N.Y.S.2d 406, 182 Misc.2d 267 (Civ. Ct., N.Y. County, 1999).)

Sometimes it will be easy to know whether your business use constitutes a substantial violation. Local zoning ordinances usually itemize prohibited uses for residential property. If your use of the premises violates local zoning ordinances, chances are your landlord could evict you. Contact your municipal clerk's office or local public library for advice on how to obtain a copy of your local zoning ordinance. Chapter 2, Section B3, provides more guidance on acceptable use of the premises, including New York City zoning laws' specific prohibitions against several home occupations.

f. Failure to Post a Security Deposit

An agreement to furnish a lawful security deposit to the landlord under the terms of a lease is a substantial obligation of the tenancy. (*Park Holding v. Johnson*, 106 Misc.2d 834, 435 N.Y.S.2d 479 (Civ. Ct. N.Y. County 1980).) For information on how large a security deposit you must post, see Chapter 5.

g. Subletting or Assigning Without Permission

By statute, any sublet or assignment by a residential tenant that does not comply with the requirements of RPL § 226-b, also known as the Sublet Law, constitutes a breach of a substantial obligation of the tenancy. Chapter 12 details the procedures that tenants must follow to properly sublet or assign their units.

h. Installing a Washing Machine Without Permission

Where a lease specifically prohibits the installation of a washing machine or other laundry equipment, the violation of that clause is a violation of a substantial obligation. (*Crystal Apts. Corp. v. Cook*, 147 Misc.2d 676, 558 N.Y.S.2d 786 (Civ. Ct. Queens County, 1990).) Even if the lease does not use the words "washing machine" or "dryer," the installation of laundry equipment in your rental unit, without the prior written consent of the landlord, violates the "no alterations and improvements" provision found in most leases and rental agreements described in Subsection b, above.

2. You May Get to Cure the Lease Violation Before Termination

If your landlord wants to end your tenancy for a lease violation, the procedure she must follow will

depend on what your lease says about default and termination and whether you are protected by rent control or rent stabilization. Most leases require that you receive a written notice to cure (also known as a default notice), before the landlord can terminate. Section B1, above, includes a sample notice to cure. Rent-regulated tenants must receive a ten-day notice to cure a tenancy violation, before the landlord may terminate. Chapter 2, Section B18, discusses lease and rental agreement provisions on tenant defaults and notice requirements.

A notice to cure is not a mere formality. If you've violated the lease, either knowingly or inadvertently, a notice to cure provides you with a real opportunity to undo the violation and maintain the status quo. If you correct, or cure, the lease violation within the time provided (usually 7 to 10 days), end of story. Things return to where they were before the lease violation and your tenancy remains intact. But if you ignore a notice to cure, the landlord is legally entitled to end your tenancy.

If you've received a notice to cure but think that it's inaccurate or unfair, you have a choice. You can try to negotiate a settlement with your landlord before the cure period ends. Section G, below, provides tips on negotiating with your landlord for more time to cure. Or you can ignore the notice and try your luck convincing a judge that the landlord's position is wrong or unfair. Unless you're clearly in the right, choosing the second option unnecessarily raises the stakes. If a judge agrees with the landlord, he may issue a judgment granting the landlord possession of the rental unit. That means that the court may issue a warrant for your immediate eviction, unless the judge decides to let you stay a little longer. We discuss stays of the warrant of eviction in Section N, below.



If your landlord sues to evict you on the basis that you violated your lease, you get one last chance to avoid eviction by correcting a lease violation within ten days after judgment. State law requires judges presiding over New York City holdover proceedings based on a lease violation to grant a ten-day stay of the issuance of the warrant, during which time the tenant may correct the lease violation and reinstate the tenancy. (RPAPL § 753(4).) Remember, however, that if your lease contains an attorney fees clause (explained in Chapter 2), you will probably be required to pay the landlord's legal fees, even if you correct the violation.

D. Termination for Immoral or Illegal Use or Occupancy

State law permits landlords to remove any tenant who uses or occupies a rental unit for an illegal or immoral purpose. (RPL § 231(a); RPAPL § 711(5).) This includes such activities as the sale or manufacture of illegal drugs or narcotics, prostitution and illegal gambling. Form leases and rental agreements commonly include a clause to this effect. But even in the absence of such a clause, the landlord can still end the tenancy.

The rental unit must be used to carry out the illegal activity. A tenant who gets arrested, say, for an assault or fraud, isn't subject to eviction just because she did something illegal. But when illegal activity routinely takes place in the rental unit, the landlord has a good case for eviction. Landlords frequently evict tenants who have been arrested for selling narcotics from the rental unit or from common areas of the building, or who have been found in possession of large amounts of drugs and drug-selling paraphernalia such as scales, bags and drug records. The local district attorney's office helps with evictions like these by landlords supplying certified copies of arrest records, and lab reports as proof of the activities going on, and police officers to testify at eviction proceedings.

To evict on the ground of immoral or illegal use or occupancy, your landlord need not prove that you were actively involved in the illegal or immoral activity—just that you knew what was going on, had the ability to control the situation, yet permitted the rental unit or common areas to be used for the activity. For example, a grandmother's tenancy was terminated on this ground because she sat by while her grandson sold drugs from her rental unit. (*Levites v. Francisco*, NYLJ, 1/15/93, p. 21, col. 5 (App. Term, 1st Dep't).)

For non-regulated units, landlords can go straight to court to remove a tenant who uses the rental unit for an illegal or immoral purpose, such as drug dealing. There's no requirement that the tenant be served with a prior notice to cure or a notice of termination. (RPAPL § 711(5).)



Rent-regulated tenants must receive a termination notice before the landlord may begin an eviction proceeding. For rent-stabilized tenancies, the landlord must serve the tenant with a seven-day termination

notice before going to court. For rent-controlled tenancies, a ten-day notice of termination is required.

Many judges have taken the position that the tenant's illegal use of the rental unit must be for an *ongoing illegal business*. Under this view, a tenant's personal consumption of a controlled substance such as marijuana or cocaine in the rental unit, while illegal, is not enough to justify a forfeiture of the tenancy. (See, for example, *1895 Grand Concourse Associates v. Ramos*, NYLJ, 12/20/98, p. 23, col. 1 (Civ. Ct., Bronx County).) When it comes to drug dealing, New York judges look for a pattern of commercial narcotics activity, especially when the tenant stands to lose a long-term rent-regulated tenancy. Some judges have ruled that isolated instances of illegal activity are not enough to warrant a forfeiture of a valuable tenancy. They take the view that the tenant must be engaged in a customary or habitual pattern of criminal activity to justify removal. (See, for example, *New York County District Attorney's Office v. Betesh*, NYLJ, 11/23/98, p. 30, col. 6 (App. Term., 1st Dep't).) This means that your landlord can't base an eviction proceeding on a mere suspicion that something illegal is going on in your apartment. It isn't enough for your landlord to smell pot wafting from your unit or see nefarious-looking guests visit you at 3 a.m. Landlords generally must produce objective evidence, such as certified copies of search warrants, arrest reports and controlled substance lab reports, to bolster a claim of illegal or immoral use of the premises. For more details on drug dealing problems in the building or neighborhood, see Chapter 13, Section D.

E. Termination for Committing or Permitting a Nuisance or Engaging in Objectionable Conduct

Most leases contain a provision permitting termination where a tenant or occupant is committing or permitting a nuisance or engaging in objectionable conduct.

A nuisance is generally defined as a pattern of tenant conduct that threatens the health, safety or comfort of neighboring tenants or other building occupants. To justify termination, the tenant's objectionable conduct must be continuous or persistent.

(*Frank v. Park Summit Realty Corp.*, 175 A.D.2d 33, 573 N.Y.S.2d 655 (1st Dep't 1991), modified on other grounds, 79 N.Y.2d 789, 579 N.Y.S.2d 649, 587 N.E.2d 287 (1991).) That means that you can't be terminated for throwing one loud, late-night party or for accidentally overflowing the tub. But a landlord may be able to terminate your tenancy if you regularly throw loud parties that interfere with other tenants' sleep or regularly overflow the tub, causing water damage to other rental units.

Here are some examples of tenant conduct that courts have found to constitute a legal nuisance:

- conduct that poses a health or fire hazard, such as an accumulation of newspapers and debris
- objectionable conduct, such as continuous loud music, foul odors, or a pattern of antisocial or outrageous behavior
- unabated animal-related disturbances, such as a dog's incessant barking, property damage, urination and defecation in the common areas, and chasing, threatening or attacking other tenants or staff, or
- a pattern of conduct that results in damage to the landlord's property, or that of other tenants—for example, keeping fish tanks that continuously leak into the apartment below.

To end a non-regulated tenancy on the nuisance ground, the landlord must follow the default procedure set forth in the lease. Usually, this requires a notice to cure, describing the pattern of conduct that is creating the nuisance and warning the tenant that the tenancy will be terminated in the event that the conduct doesn't stop within a specified time period, usually ten days or so. If the conduct continues, the landlord may serve a notice of termination. If the lease does not require a notice to cure, none is required. A termination notice is all that's required

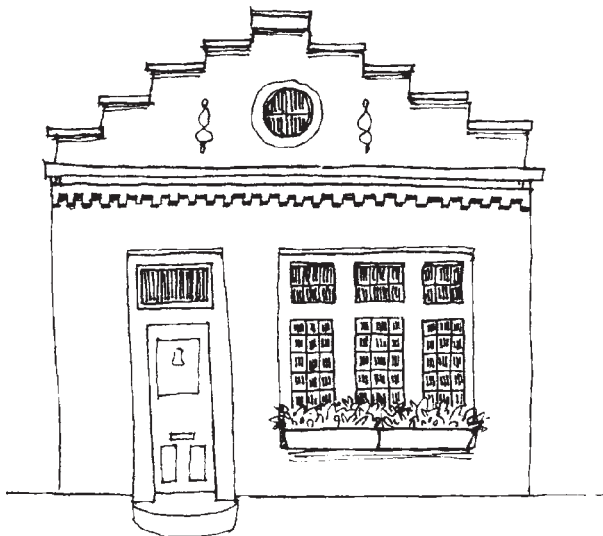


Rent-controlled and rent-stabilized tenants may be terminated on the basis of nuisance or objectionable conduct, too, which specifically includes any unreasonable use of the property that is intended to harass the owner or other tenants of the building. (See, for example, 9 NYCRR (RSC) § 2524.3(b).) To evict a rent-stabilized tenant on the basis of nuisance or objectionable conduct, the landlord must first serve the tenant with a seven-day termination notice. For state (ETPA) rent-stabilization, the termination notice must be preceded by a ten-day notice to cure, unless the tenant is inflicting serious or substantial injury to the landlord or to the premises, in which case no notice to cure is required. (9 NYCRR 2504.2(b), 2504.3(c)(2).) Rent-controlled tenants must receive a ten-day notice of termination. No prior notice to cure is required.

F. Reasons Why Landlords May Terminate Rent-Regulated Tenancies

So long as you pay rent, your rent-controlled or rent-stabilized tenancies may be terminated only as permitted under applicable rent laws and rent regulations. Generally, rent-regulated tenancies may be terminated by the landlord if you:

- violate a substantial obligation of the tenancy (Section C, above)
- use or occupy the premises for an illegal or immoral purpose (Section D, above)
- engage in objectionable conduct or permit a nuisance (Section E, above)
- refuse to provide access for necessary repairs or improvements (Section F1, below)
- refuse to renew a written lease agreement (Section F2, below)
- don't use the premises as a primary residence (Section F3, below), or



- charge your roommate more than her proportionate share of the regulated rent (Section F7, below).

Rent-regulated tenancies may also be terminated—for example, if the landlord:

- requires the unit for his own use (Section F4, below)
- seeks to withdraw the unit from the rental market (Section F5, below), or
- wishes to demolish the premises (Section F6, below).

The forms and procedures for terminating rent-regulated tenancies in different situations are explained in the following sections. In limited circumstances (noted below), the landlord must apply to the DHCR for a Certificate of Eviction before proceeding in court to evict a rent-regulated tenant.

1. Refusal to Provide Access

A rent-regulated tenant's unreasonable refusal to permit the landlord access to the unit to make necessary repairs or improvements required by law, or to show the unit to prospective purchasers or mortgagees, is a ground for termination. (Unconsol. L. § 8585.1(f); 9 NYCRR § 2524.3(e); 9 NYCRR § 2504.2(e).) Chapter 8 discusses a landlord's right of entry and your right to privacy. The procedure for termination for refusal to provide access varies, depending on the applicable rent regulatory system. Here are the basic rules.

a. NYC Rent-Stabilized Tenants

To obtain access to a rent-stabilized unit in New York City for the purpose of an inspection or a showing, your landlord must provide at least five days' advance notice so that you and your landlord may attempt to arrange a mutually convenient appointment. (9 NYCRR § 2524.3(e).) If you fail or refuse to provide access, in most situations the landlord can serve a termination notice (without a cure option) right away. But if access is a requirement of the lease and the lease requires that a notice to cure to be served in the event of a violation, the landlord must give you a second chance by serving you with a ten-day written notice to cure the violation. (9 NYCRR § 2524.3(a); *B.A. Associates Equities Corp. v. Baez*, NYLJ, 1/6/93, p. 25, col. 2 (Civ. Ct., Kings County).) If you refuse to provide access, the landlord may issue a termination notice at least seven calendar days prior to the intended termination date.

b. NYS Rent-Stabilized Tenants

You must first be served with a ten-day written notice to cure the violation. If you don't arrange for access before the cure period expires, the landlord may then issue a one-month notice of termination.

c. All Rent-Controlled Tenants

Refusing to provide access can be costly for rent-controlled tenants. The landlord is not required to give you an opportunity to cure the tenancy violation. But the landlord must serve a one-month termination notice, unless you are a weekly tenant, in which case the landlord must serve you with a seven-day termination notice.

2. Refusal to Renew Lease

Landlords must offer rent-stabilized tenants a renewal lease during the window period before their current lease ends, as discussed in Chapter 2, Section E. Since rent-controlled tenants have no current lease, landlords aren't required to offer to renew them.

If you refuse to respond to your landlord's renewal lease offer and don't move out at the end of your current lease term, the landlord may terminate your tenancy, provided the renewal lease offer was proper and timely offered. The procedure for termination is as follows.

a. Rent-Stabilized Tenants

There's no second bite at the apple for rent-stabilized tenants. If you fail to accept your landlord's renewal offer and renew your lease within the 60-day period from the date the notice is mailed or hand-delivered to you, you must move out when your current lease expires. If you stay, the landlord may serve you with a 15-day termination notice. (9 NYCRR §§ 2524.2(c)(1), 2504.2(f).)

b. All Rent-Controlled Tenants

Landlords aren't required to offer renewal leases to rent-controlled tenants. Nevertheless, if your landlord offers you a renewal lease and you refuse to sign it, rent control laws permit the landlord to end the tenancy by serving you with a one-month termination notice. If you are a weekly tenant, the landlord must serve a seven-day termination notice. (9 NYCRR §§ 2104.3(d)(2), 2204.3(d)(2).)

3. Failing to Use Your Apartment As Your Primary Residence

Because rent-regulated apartments are in such short supply, state law requires rent-regulated tenants to use them as a primary residence. (9 NYCRR § 2524.4(c); 9 NYCRR § 2504.4(d).) The primary residence rule is intended to prevent tenants from using valuable rent-regulated units as occasional residences or as places for friends to stay.

A landlord who suspects that you no longer use your unit as a primary residence may hire a private investigator to check out your situation. Investigators usually have access to computer databases that may turn up a different address where you register your car, pay bills or have a family. To recover an apartment on the ground of non-primary residence, the landlord must be able to show that you have not maintained an “ongoing, substantial, physical nexus with the premises for actual living purposes as demonstrated by objective, empirical evidence.” (*East End Temple v. Silverman*, 199 A.D.2d 94, 605 N.Y.S.2d 56 (1st Dep’t 1993).)

Although no single factor is solely determinative, the DHCR has said it may consider the following evidence in determining whether an apartment is occupied as a primary residence:

1. specifying an address other than the apartment as a place of residence on any tax return, motor vehicle registration, driver’s license or other document filed with a public agency
2. using an address other than the apartment as a voting address
3. occupying the apartment for an aggregate of less than 183 days of the most recent calendar year, except for temporary periods of relocation for military service, enrollment as a full-time student, employment requiring temporary relocation or hospitalization for medical treatment, and
4. subletting the apartment. (9 NYCRR § 2520.6(u).)

Chapter 7, Section B4, covers the primary residence requirement in a different context—the Roommate Law. Specifically, it discusses how a tenant may not be entitled to share a rental unit with immediate family members or roommates unless the tenant uses his or her rental unit as a primary residence. This primary residence requirement applies to regulated and non-regulated tenants.



If you spend weekends at a second home or are out-of-town a lot, many landlords will claim that you are violating the primary residence requirement in an attempt to get back your apartment. In such cases, provide documentary evidence such as a copy of your driver’s license, car registration, voter registration card and/or tax returns to the landlord to show that you use the apartment as your primary residence. This may be enough incentive for the landlord to withdraw an eviction proceeding.

After a non-primary residence eviction proceeding begins, courts generally permit the landlord to engage in “discovery” proceedings. This isn’t a license to conduct a fishing expedition, but allows the landlord to make a narrowly tailored demand for some of your personal records, such as copies of your tax returns, driver’s license, insurance cards, utility bills, personal calendars, bank and credit card statements or other documents that may establish a different primary residence. You may also be required to answer oral or written questions under oath in a deposition before trial. If you are clearly violating the non-primary residence requirement and want to avoid subpoenas and depositions, consider offering to settle the proceeding by agreeing to move out at a later date.

a. NYC Rent-Stabilized Tenants

If you are rent-stabilized and your landlord has grounds to believe that you do not use your apartment as your primary residence, the landlord may refuse to renew your lease and evict you at the end of the current lease term. To terminate the tenancy, New York City landlords are required to first serve a notice of non-renewal during the 90- to 150-day window period prior to the expiration of your current lease. In addition, you must receive a 30-day termination notice. Your landlord may combine both notices in the notice of non-renewal.

b. NYS Rent-Stabilized Tenants

Your landlord may refuse to renew your lease if she has grounds to believe that you don’t occupy your apartment as a primary residence. You must receive a 30-day termination notice. An exact copy of the termination notice, along with proof of service, must be filed with your local DHCR office within seven days of the day the landlord serves you the termination notice. It is unsettled whether the landlord must also

serve a notice of non-renewal during the 90- to 120-day window period prior to the expiration of the tenant's lease (at which time a renewal lease would ordinarily be required to be offered). (9 NYCRR § 2503.5(a).) While neither the Emergency Tenant Protection Act (ETPA) nor the regulations require the landlord to serve a notice of non-renewal, some courts have suggested that such a notice is nevertheless necessary. (*Crow v. 83rd Street Assoc.*, 68 N.Y.2d 796, 506 N.Y.S.2d 858, 498 N.E.2d 422 (1986).)

c. NYC Rent-Controlled Tenants

If you are a New York City rent-controlled tenant, you must be served with a 30-day notice of termination. No DHCR Certificate of Eviction or other notice from the landlord is required. (*Berman v. Keeton*, 727 N.Y.S.2d 156 (2d Dep't 2001).) The termination notice must state the ground for removal—that you do not use the premises as a primary residence—and also recite the facts that will prove this. In addition, your landlord must file an exact copy of the notice of termination, along with an affidavit of service, with the local DHCR office within 48 hours of service of the notice on you.

d. NYS Rent-Controlled Tenants

For New York State rent-controlled tenants, your landlord must apply to the DHCR for a Certificate of Eviction. If the DHCR grants the certificate to your landlord, you must receive a one-month termination notice from the landlord before an eviction proceeding may be brought against you.

4. Recovery for Owner's Use ("Owner Occupancy")

In many cases, an owner-landlord may recover possession of a rent-regulated unit for his or her own use or for the use of an immediate family member. The Rent Reform Act of 2000 broadened the definition of immediate family member for all four systems of rent regulation to include the following relatives of the owner: spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law. (See, for example, 9 NYCRR (RSC) § 2520.6(n).) As a result, more tenants are being evicted on the ground of recovery for owner's use, especially in smaller buildings.

Exemptions. Unless the tenant is offered equivalent or superior housing at the same or lower regulated rent in a "closely proximate area," the landlord may not recover the unit for owner's use where the tenant or the tenant's spouse is:

- a senior citizen age 62 or older
- disabled, or
- depending on the system of rent regulations that apply, a tenant of the apartment for 20 years or more. (Unconsol. L. § 8630, subds. a, b; 9 NYCRR §§ 2204.5, 2504.4(a)(2), 2524.4(a)(2).) This 20-year rule applies to rent-controlled tenants statewide and to ETPA rent-stabilized tenants who live outside New York City. Long-term New York City rent-stabilized tenants are not protected by the 20-year rule and may be evicted to make way for the owner. (*Brusco v. Armstrong*, NYLJ, Feb. 6, 2002, p. 19, col. 1 (App. Term., 1st Dep't).)

Tenants in Co-Op/Condo Buildings Take Note

If you are a "non-purchasing tenant" in a building that has been converted from a rental building to a cooperative or condominium, you may not be evicted for "owner's use" on or after the date the plan to convert the building to cooperative or condominium ownership is declared effective by the Office of the Attorney General. (9 NYCRR § 2524.4(a)(1); see GBL § 352.) If your owner tries to evict you on this ground, point this out to the judge. Bring any proof you have of when the building was converted. If you don't have anything, the Office of the Attorney General, Real Estate Financing Bureau, should be able to supply you with the documentation you need. Appendix A has information on how to contact the AG's office.

For more information, read DHCR Office of Rent Administration Fact Sheet #10, "Eviction from an Apartment Based on Owner Occupancy." To obtain a copy of the fact sheet, request it from the DHCR InfoLine, 718-739-6400, download it from the DHCR website (www.dhcr.ny.us) or pick one up at your local DHCR office. Appendix A lists addresses for DHCR offices throughout the state.

a. NYC Rent-Stabilized Tenants

Your landlord may refuse to renew your lease and may terminate your rent-stabilized tenancy in order to recover possession of the unit for the landlord's personal use and occupancy, or for that of an immediate family member's, for use as a primary residence. (9 NYCRR § 2524.4(a)(1).) To win an eviction proceeding on this ground, the owner-landlord must demonstrate a good-faith intention to occupy the apartment for personal or family use. (*Nestor v. Britt*, 213 A.D.2d 255, 624 N.Y.S.2d 14 (1st Dep't 1995).) Once an apartment is recovered, the landlord or family member must remain in occupancy for at least three years. (9 NYCRR § 2524.4(a)(5).)

Corporate landlords may not recover units on this ground. (*Fanelli v. NYC Conciliation and Appeals Bd.*, 90 A.D.2d 756, 455 N.Y.S.2d 814 (1st Dep't 1982) aff'd 58 N.Y.2d 952, 460 N.Y.S.2d 534, 447 N.E.2d 82 (1983).) The law is not settled, however, as to whether a principal in a partnership may recover a unit for personal use or for use by an immediate family member. While some courts have permitted individual partners of a partnership to recover units for their own occupancy, at least one court has ruled that a partnership landlord may not evict a tenant on this ground. (*Hart Realty v. Schneider*, NYLJ, 5/25/94, p. 28, col. 3 (Civ. Ct. N.Y. County).)

Before a landlord may evict you on this ground, you must receive a notice of non-renewal during the 90- to 150-day window period before the expiration of your current lease. The notice should state the full name of the person who will be occupying the rental unit after it is recovered, and that person's relationship to the owner-landlord. You must also receive a 30-day notice of termination, which may be combined with the notice of non-renewal.

b. NYS Rent-Stabilized Tenants

Your landlord may refuse to renew your lease if you are a New York State (ETPA) rent-stabilized tenant if she can demonstrate an immediate and compelling need to recover possession of the premises for her own personal use or that of an immediate family member. (9 NYCRR § 2504.4(a).) Before beginning a holdover eviction proceeding against you to recover the premises on this ground, the landlord must first apply for and receive a DHCR Certificate of Eviction. (9 NYCRR § 2504.4(a)(4).)

c. All Rent-Controlled Tenants

Your landlord must obtain a DHCR Certificate of Eviction before starting a holdover eviction proceeding seeking to remove you for owner's use. (9 NYCRR § 2204.5(a); 9 NYCRR § 2104.5(a)(1).) The DHCR will issue the certificate if it finds that your landlord seeks in good faith to recover possession of the unit because of immediate and compelling necessity for his personal use and occupancy or for that of a member of his immediate family. (Unconsol. L. § 8585.2(a); 9 NYCRR § 2204.5(a); 9 NYCRR § 2104.5(a)(1).)

To be entitled to recover the unit on the basis of owner's use, the owner-landlord must be an individual, and not a corporation or partnership. (*Burke v. Joy*, 99 A.D.2d 952, 472 N.Y.S.2d 643 (1st Dep't 1984); *Henrock Realty v. Tuck*, 52 A.D.2d 871, 383 N.Y.S.2d 47 (2d Dep't 1976).)

5. Landlord's Withdrawal of Unit From Rental Market

Under certain circumstances, a landlord may terminate a rent-regulated tenancy in order to permanently withdraw the unit from the market. The circumstances and procedure depend on the unit's location and whether it's subject to rent stabilization or rent control.

a. NYC Rent-Stabilized Tenants

Your landlord may refuse to renew your lease if he seeks in good faith to withdraw the unit from both the residential and commercial rental markets. To qualify, the landlord must have no intention of renting or selling all or part of the land or structure. (9 NYCRR § 2524.5(a)(1).) In addition, the landlord must establish that:

- all or part of the rental unit or the land is needed for use in connection with a business the landlord owns and operates, or
- substantial violations which constitute fire hazards or conditions dangerous to the life or health of the tenants have been filed against the building and the cost of removing these violations would equal or exceed the building's assessed valuation.

The landlord must apply for and obtain a DHCR Certificate of Eviction. While the application is pending, the landlord may send a notice of non-renewal during the 90- to 150-day window period prior to the expiration of your lease. (9 NYCRR § 2524.5(a)(1).)

b. NYS Rent-Stabilized Tenants

Your landlord may refuse to renew your lease if he seeks in good faith to withdraw your rental unit from both the housing and non-housing rental markets. To qualify, the landlord may not have any intention of renting or selling all or any part of the land or structure. (9 NYCRR § 2504.4(b).)

Your landlord must apply to the DHCR for a Certificate of Eviction. While the application is pending, your landlord may send a notice of non-renewal during the 90- to 120-day window period prior to the expiration of the tenant's lease. (9 NYCRR § 2504.4(b).)

c. All Rent-Controlled Tenants

Your landlord may end your rent-controlled tenancy if he can establish that he seeks to permanently withdraw your rental unit from both the non-housing and housing markets, with no intent to rent or sell all or part of the land or structure. The landlord will need to obtain a DHCR Certificate of Eviction. (9 NYCRR § 2104.9; 9 NYCRR § 2204.9(a).) To be eligible for the Certificate, the landlord must satisfy one of the following requirements:

- he requires the entire structure containing the unit or the land for his own immediate use in connection with a business he owns and operates in the immediate vicinity of the property
- substantial violations affecting tenant health and safety have been filed against the building and the cost to remove the violations would substantially equal or exceed the building's value, as assessed for property tax purposes
- the landlord is an institution operated exclusively for charitable, religious or educational purposes, and the unit is required for his immediate use in connection with its charitable, religious or educational functions (9 NYCRR § 2104.9(c); 9 NYCRR § 2204.9(a)(3)), or
- continued operation of the rental unit would impose other undue hardship. (9 NYCRR § 2104.9(d); 9 NYCRR § 2204.9(a)(4).)

6. Demolition of the Building

In some cases, a landlord may terminate your tenancy in order to demolish your building. There are important limitations to this termination right, depending on whether you are rent-controlled or rent-stabilized, and where the building is located.

a. All Rent-Stabilized Tenants

Your landlord may refuse to renew your lease if she intends to demolish the entire building. Before the landlord can seek your eviction, the DHCR must first issue a Certificate of Eviction. The Certificate will be granted if your landlord can demonstrate (1) that plans for the undertaking have been filed with or approved by the New York City Department of Buildings, and (2) a financial ability to complete the project. (9 NYCRR § 2524.5(a)(2).)

To fight the owner's application for a Certificate of Eviction, take a look at DHCR Operational Bulletin 2002-1, "Procedures Pursuant to the Rent Stabilization Code for the Filing of an Owner's Application to Refuse to Renew Leases on the Grounds of Demolition, Implementing Emergency Tenant Protection Regulations." It details the eligibility and notice requirements. In many cases, the DHCR may require the landlord to offer tenants relocation assistance, payment of moving expenses and/or a stipend. To obtain a copy of the bulletin, request one from the DHCR InfoLine 718-739-6400, download it from the DHCR website (www.dhcr.ny.us) or pick one up at your local DHCR office. (Appendix A lists addresses for DHCR offices throughout the state.)

b. All Rent-Controlled Tenants

Your landlord can terminate your rent-controlled tenancy for the immediate purpose of demolishing the building and constructing a new commercial building or a new residential building that contains at least 20% more rental units than the building being demolished. (Unconsol. L. § 8585.2(d); 9 NYCRR §§ 2204.8, 2104.8.) The DHCR may reduce the 20% requirement where there are outstanding fire and housing code violations issued against the building, which would be prohibitively expensive to correct—that is, if the costs would equal or exceed the value of the building for tax purposes.

To terminate your tenancy, the landlord must first apply for a DHCR Certificate of Eviction. To qualify for the Certificate, the landlord must already have secured the appropriate governmental approvals for the demolition. After the Certificate is granted, you must be served with a 30-day termination notice if the property is in New York City and a one-month termination notice if the property is located elsewhere in the state.

DHCR Operational Bulletin 2002-1 details the landlord's obligations to pay your moving expenses, provide relocation assistance and/or pay you a stipend. Section a, above, describes how to obtain it.

7. Roommate Overcharge by NYC Rent-Stabilized Tenant

The Rent Stabilization Code now puts limits on the amount of rent NYC rent-stabilized tenants may charge their roommates. (RSC § 2525.7(b).) See Chapter 7, Section D, for details.

The regulation, intended to shield roommates from profiteering tenants, may also be used as a sword by landlords. Rent-stabilized tenants who overcharge their subtenants are subject to eviction, according to one intermediate appellate court decision. (*Ram I. LLC v. Mazzola*, NYLJ, Jan. 2, 2002, p. 18, col.1 (App. Term, 1st Dep't).) So if a landlord gets wind of a roommate overcharge, both the tenant and the roommate are vulnerable to eviction. According to the decision, no prior notice to cure is required, meaning that the rent-stabilized tenant will not get a chance to fix the overcharge before termination. Before going to court to evict a tenant on this ground, the landlord must issue a seven-day termination notice.

tenancy in exchange for your firm commitment to move out on a specific date.

- If you received eviction papers, do you have a good defense to the landlord's reason for giving you the notice? If not, you may want to consider negotiating a quick settlement that gives you the time you need to find a new rental.
- If you have a good defense to eviction, do you have the time, energy and stamina to fight an eviction—and the resources to hire a lawyer if necessary?
- If you lose, are you willing to accept the negative consequences in terms of your credit rating and chances for future rentals?

This section explains different options you have if you're threatened with termination or eviction.



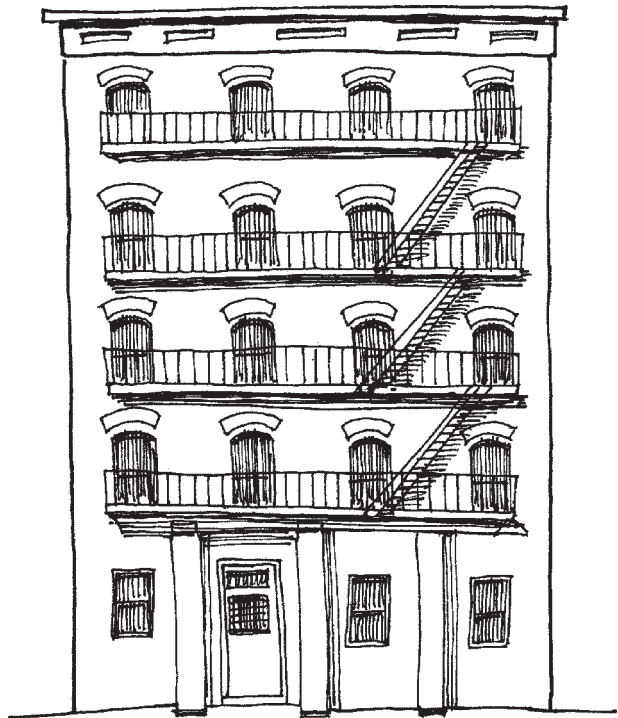
Tenants are responsible for their co-tenant's misdeeds.

Even if you are completely blameless, you can be evicted if your co-tenant violates the lease, a law or a rent regulation. A court will not just order the eviction of the wrongdoer—everyone who lives in the rental unit is removed in an eviction.

G. Evaluating Your Legal Options

If you receive a notice to cure, termination notice, notice of non-renewal or eviction papers, your response will depend on if and how long you would like to stay and whether you have a good defense to termination. Here are some questions to consider before taking any action.

- If you received a notice to cure, are you willing to fix the tenancy violation by, say, giving up an illegal subtenant or pet by the deadline set in the notice?
- If you received a notice of termination, do you want to stay? If not, moving out by the termination date set in the notice entitles you to the return of your security deposit, provided that you owe no rent and you leave the rental unit in good condition. Chapter 18 discusses getting your security deposit back.
- If you do want to stay, for how long? You may be able to negotiate a short extension of your



1. Negotiate With the Landlord

If you don't want to move, negotiation should always be your first response—especially if you feel the termination is not completely justified. For instance, if there is some validity behind your landlord's termination notice—for example, your last two parties were a bit raucous, or you installed a clothes washer without permission—your best bet is to meet with your landlord and agree on making some changes in the future. Don't be shy about negotiating. After all, from your landlord's point of view, striking a deal can make far more sense than going to court to evict you. Remember, lawsuits are time-consuming, expensive and filled with technicalities; they are certainly a lot less attractive, business-wise, than negotiating a firm settlement that the landlord believes you will abide by.

It goes without saying that a landlord who perceives you as an inveterate troublemaker is unlikely to want to bargain. And of course, some landlords are so unapproachable or irrational that meeting on a one-to-one basis is sure to be fruitless. If so, you'll have to consider going to court in an attempt to preserve your tenancy—assuming you have a good defense—or at least to buy some time.



Negotiation is tougher for rent-regulated tenants.

Most rent-regulated tenants pay below market rents. Since your landlord will be entitled to a hefty rent increase if you move out or if you get evicted, your landlord will be far less likely to want to hammer out a settlement that lets you stay.

a. When You're at Fault

If the landlord has a valid reason for terminating your tenancy, you'll find that negotiation is most likely to work under two conditions:

- you have generally been a stable, rule-abiding tenant who pays rent on time, and
- the alleged violation is relatively minor and can be completely remedied.

For example, if you've kept your friend's dog for a couple of weeks in violation of the no-pets rule and the animal has not caused substantial damage or annoyance, your landlord might give you a few extra days (beyond the time specified in the notice to cure or default notice) to find a home for the pooch. Similarly, if the landlord is mad because you've been

using your apartment to launch your new interior decorating business in violation of local zoning laws, offer proof that you've relocated your business by showing him your new office space lease.



If you persuade your landlord to give you more time to cure a violation, prepare a simple written agreement confirming the arrangement.

Your agreement, which should be signed and dated by both of you and attached to the notice to cure, might go something like this: "Landlord agrees to extend tenant's time to cure the violation described in the attached notice until March 30, 200x." That way, your landlord can't turn around and hit you with a termination notice before the specified date.

b. When You've Done Nothing Wrong

If a termination notice accuses you of something you did not do—or, at least, did not intend to do—you're in a difficult position. True, if the case goes to court, the landlord will have the job of proving your misdeeds. But short of that, during informal negotiations you must convince the landlord that you're not guilty. In some cases, it may be difficult—maybe even impossible—to convince your landlord that he has exaggerated the situation or is just plain wrong. Here are some possible strategies for different situations:

- **The landlord has made a mistake.** The landlord thinks you are responsible for the wildly loud Saturday night parties that last into Sunday afternoon, or that your dog is the one that has been soiling the hallway carpeting. But it's actually the guy in 4B. Here you will need not only evidence that you're blameless—for example signed statements from neighbors—but also a great deal of tact. Don't rub your landlord's face in his error. Not only may this poison your future relations, it's likely to result in your landlord refusing to renew your lease when it runs out.
- **You made a good-faith error.** You violated a term of your tenancy, but really didn't intend to do so. For example, perhaps you mistakenly believed that you could install padlocked security gates on the window leading to your fire escape, without violating the fire code. Removing the gates and honestly explaining your confusion may get results.

- **Your landlord's true motive is discriminatory.** Your landlord delivers a notice to cure because you keep your daughter's stroller in the hall outside your apartment—a minor violation of the lease that the landlord never enforces against other tenants at your building. You suspect you've been singled out because you are of Middle Eastern descent. Confronting a narrow-minded landlord may seem like a waste of time, but you do have a bargaining chip. You can file a discrimination complaint. Chapter 11 explains how. You can always withdraw it if the landlord comes to her senses.
- **The termination is retaliatory.** Your landlord decides to object to your kitchen renovation only after you form a tenants' association in the building. Educating an ignorant landlord about New York's anti-retaliation law might persuade him to withdraw the objection. Chapter 11 explains how the law operates to protect tenants from retaliatory eviction.

2. Refuse to Move Out—And Go to Court

If you and your landlord have been unable to negotiate an agreement under which you remain in occupancy as a tenant, you basically have these choices:

- abide by the terms of the termination notice and move out
- try to negotiate an extension of your termination and move-out date, or
- force the landlord to start eviction proceedings.

Refusing to comply with a termination notice makes sense in three situations: (1) the landlord's reasons for terminating your tenancy are wrong, (2) there are discriminatory or retaliatory reasons for the termination or (3) you need to buy time to find another place. We discuss each situation below.

a. When You're in the Right

The most obvious reason to ignore a termination notice and fight an eviction lawsuit is if you're right and you're prepared to take the time and the risk of going to court to prove it.

EXAMPLE: You're a rent-stabilized tenant in Manhattan and you own a weekend cottage in the Hamptons. You receive a notice of non-renewal from your landlord claiming that the

cottage is your primary residence. Since you live, work and pay taxes in New York City and use the cottage only on weekends, you will probably be in no mood to move or even compromise. Nevertheless, you explain to your landlord that the cottage is merely a weekend getaway and that your apartment is indeed your primary residence. If the landlord refuses to listen, you have no choice but to go to court to keep your apartment.

b. When the Termination Is Discriminatory

It is illegal for landlords to terminate your tenancy because of your race, religion, disability or other discriminatory reason. For instance, if the real reason your landlord is ending your tenancy is because of your ethnicity, and not because of an alleged, minor lease violation, you are a victim of illegal discrimination. Similarly, if your landlord is terminating your tenancy because you have refused to remove an assistance pet you need to accommodate your disability, your landlord is violating anti-discrimination laws. Chapter 11 explains how to file a discrimination complaint with an administrative agency.

In some cases, courts have postponed, or “stayed,” eviction proceedings against tenants who have discrimination complaints pending against their landlords. Section J3, below, discusses how to raise a pending prior proceeding as an affirmative defense to a hold-over proceeding.

c. When the Termination Is Retaliatory

It is also illegal for a landlord to try to get even with tenants who have made legitimate housing complaints to government agencies and authorities, have filed legal proceedings or lawsuits to enforce their rights as tenants or have organized or joined a tenant association. Fortunately, state law (New York Real Property Law § 235-b) prohibits landlords from serving a termination notice or starting an eviction proceeding in retaliation for your having asserted your rights as a tenant. Chapter 11 explains how to stop a retaliatory eviction.

If, after reading Chapter 11, you believe that your landlord's true motive for terminating your tenancy is retaliatory, make a point to assert the affirmative defense of “retaliatory eviction” in your answer to the landlord's eviction petition. Section J, below, explains how to prepare an answer.

3. Buying Time When You Have No Defense

If your landlord is justified in terminating your tenancy, the cleanest course of action is to move out by the date set in the termination notice. But in a tight housing market, you may have no place else to go. In extreme circumstances like these, you have a choice. You could ask the landlord to extend your termination date a month or two into the future (and agree to pay rent until you move out). Or, you can simply remain in the apartment until a marshal or sheriff comes knocking to evict you (this will usually be within three to six weeks after you receive the notice, longer in New York City).

Extending your tenancy to an agreed-upon move-out date is usually the best bet for both you and your landlord. An eviction will make it far harder for you to obtain rental housing, and perhaps other forms of credit, in the future. An eviction will also cost your landlord time and money. Nevertheless, many landlords will refuse to give you more time, presuming that you'll never voluntarily move out. One way to overcome this presumption is to present the landlord with proof that you definitely plan to move on the agreed-upon date, such as a lease for a new place or a one-way ticket to L.A.

Another time-buying strategy is to continue to remit rent after getting a termination notice. Probably, the landlord will reject your rent check and send it back. But if the landlord accepts your payment, you might have bought yourself some time. Some courts have ruled that the acceptance of rent after termination of the tenancy operates to reinstate the tenancy. If you are later served with eviction papers, you can raise acceptance of rent as an affirmative defense in your answer to the landlord's petition. (We explain how to answer a petition in Section J, below). Keep in mind though, that even if this tactic works and the landlord's eviction proceeding is dismissed, you can expect the landlord to start all over again by issuing a new termination notice.

H. Eviction Papers: The Notice of Petition and Petition Holdover

If you don't move out at the end of your lease or by the deadline in a termination notice, your landlord can serve you with eviction papers the very next day—regardless of whether or not you have a good

reason for staying. Eviction papers consist of a notice of petition and petition holdover. "Holding over" is the legal terms for remaining in occupancy of a rental unit after the tenancy has ended.

We explain the content of the notice of petition and petition holdover in the sections below. Chapter 15, Section G, describes how the eviction papers must be served to you. Sections I and J, below, discuss answering the petition.

1. Notice of Petition

At first glance, a notice of petition (also called notice of petition holdover) may seem like a lot of meaningless legalese, but it is actually a very important document. Translated into plain English, the notice informs you that:

- Your landlord has started an eviction proceeding against you in court to remove you from your rental unit for the reasons given in the attached document, called the petition.
- Your landlord may have also asked the court for a money judgment for unpaid rent (if any), "use and occupancy" rent while the eviction proceeding is pending, interest, and attorney fees (if authorized by the lease).
- You must answer the petition at the first hearing of the eviction proceeding (or at least three days before the first hearing if the petition is served on you more than eight days before the first hearing and the notice so demands). We explain this procedure in section I2 below.
- If you ignore the notice and don't go to court to answer the landlord's petition, a "default" judgment will be taken against you, meaning that you may be evicted in ten or more days, and
- If you live in New York City and ask for more than one court adjournment (postponement), or the proceeding drags on for more than 30 days, the landlord can ask the court to direct you to deposit rent or "use and occupancy" rent with the court.

Attached to the notice of petition is a sworn statement from the landlord, called a petition, which explains the legal and factual reasons why the landlord is seeking your eviction. Section 2, below, discusses the petition or petition holdover. Section I, below, explains how to answer the petition.

A sample Notice of Petition for a New York City holdover proceeding appears in Section B, above.

Notices for proceedings outside of NYC are similar but omit the last paragraph about rent deposits, since the rent deposit law does not apply outside of the city.



Respond immediately to any eviction papers, post cards or notices that are delivered or mailed to you from your landlord, your landlord's attorney or from a court. If you ignore these papers and do not go to court, a default judgment could be entered against you for failure to answer and you could be evicted. Some tenants make the mistake of waiting until they are handed a 72-hour notice of eviction before going to court. In the past, a judge could help tenants in these situations by stopping the eviction until the tenant's case was heard. Now, state laws have been toughened and judges have far less discretion to stop or postpone evictions. If you're served with a notice of petition and petition holdover, don't wait until you're served with a notice of eviction before going to court. It may be too late to rescue your tenancy, even if the termination was groundless. Unless you can show that your "default" (failure to respond to the notice of petition and petition) was excusable and that you have a meritorious defense to the proceeding, you will be out of luck. We discuss defenses to holdover petitions in Section I, below.

2. Petition Holdover

Attached to the notice of petition is another document called a petition holdover. This is a sworn statement from the landlord that sets forth the facts and the legal grounds that support the landlord's request for eviction. Each paragraph of the petition is numbered, so you can respond to the petition paragraph-by-paragraph in your answer.

Like the notice of petition, the petition is steeped in legalese. Stripped to its basics, the petition provides the following information:

- the name of the person or entity bringing the eviction proceeding (called the "petitioner") and the petitioner's relationship to the rental unit—for instance, owner or landlord (or overtenant if the unit is sublet)
- the tenant's name (called the "respondent") and relationship to the rental unit (tenant, subtenant or occupant)
- the rental unit address, including any apartment designation
- the date the tenancy ended or was terminated

- a statement that the tenant was served with a notice of termination (and, where applicable, preceded by a notice to cure or notice of nonrenewal), and
- a request for a judgment granting possession of the rental unit to the landlord, an eviction warrant to remove the tenant and any other occupants from possession, a money judgment for rent (if due), "use and occupancy" rent and interest, court costs and attorney fees, if authorized under the lease or rental agreement.

The petition must end with the landlord's "verification"—which is a signed statement that, to the best of the landlord's knowledge, the facts contained in the petition are true. If the landlord is a corporation, a corporate officer may sign the verification. If the landlord is a partnership, a partner may sign the verification.



In localities in which rent regulations are in effect, the petition must also state the rental unit's regulatory status. This lets the judge know which rent laws and regulations apply to your rental unit. Chapter 4 has a list of localities in which rent regulations are in effect and describes protections from eviction afforded rent-regulated tenants.



In New York City, the petition must also state whether the building is a multiple dwelling. If it is, the petition must further state that the property is currently registered as a multiple dwelling with the New York City Department of Code Enforcement.

I. Answering the Holdover Petition: Procedural Considerations

As directed in the notice of petition, you must "answer," or respond, to the landlord's petition in court in order to avoid a default judgment against you and eviction from the rental unit. An answer also explains your "defense," or legal justification, for remaining in occupancy. For example, a landlord's failure to give you notice and an opportunity to cure a lease violation, where required under a lease or applicable rent regulations, is a valid tenant defense in a holdover proceeding. (We discuss this and other common defenses in Section J, below). In addition to one or more defenses, your answer may raise any claims you have against your landlord for money damages—

say, for attorney fees, if your lease or rental agreement authorizes them.

This section explains the rules on answering a petition holdover. You may answer the petition orally or in writing. Section 1, below, examines the benefits and drawbacks to both options. The procedure and timetable you must follow to answer the petition are discussed in Section 3. If you don't answer the petition within the time provided, the landlord may ask the court for a "default" judgment and you may be evicted without ever having your day in court. Section 6, below, discusses default judgments and what you can do to avoid eviction if one has been taken against you.

Once you're familiar with the rules on filing an answer, go to Section J, below, for help with the substance of your response. There, we look at common defenses and counterclaims that tenants may raise in their answer.



Don't depend on a co-tenant to answer the petition for you.

If your co-tenant was also served with eviction papers, you should each answer the petition individually, even if your defenses and claims are exactly the same. Co-tenants are "jointly and severally" liable for complying with all of the terms and conditions of the lease—which means that you can both be held responsible for a lease violation that only one of you has committed. If you depend on your co-tenant to answer the petition, and she forgets or otherwise defaults, you can both be evicted.

1. Deciding Between an Oral and Written Answer

Your answer may be oral or written. Here are some points to keep in mind when deciding which is better in your situation.

a. Oral Answers

Answering orally means using your own words to explain why you think you are entitled to remain in the rental unit. In addition to one or more defenses, your oral answer can include any money claims you have against the landlord—for example, for attorney fees if your lease authorizes it. You can also raise so-called technical defenses in your oral response—for instance, that you never received a notice to cure or termination notice from the landlord. Section J, below, analyzes common defenses and counterclaims.

The person to whom you give your oral answer, be it a judge, a court attorney or a court clerk, may ask questions about your case in order to fully understand your defenses and claims. That person may also take notes or complete a form in response to your comments. These notations become part of your court file.



The Housing Court has a special "pro se" answer form for tenants who represent themselves without a lawyer.

The clerk will complete the form for you, based on your answers to various questions. After you tell the clerk your answer, get and review a copy of the form to make sure that the clerk has checked off or written down all of the defenses that apply to your case. If something is missing, ask the clerk to include it on the form before you leave. The clerk keeps the original answer form and sends a copy to the landlord or the landlord's attorney.

b. Written Answers

Instead of answering orally, you may file a written answer. There are several advantages to filing a written answer:

- the exercise of drafting an answer helps you focus on all available defenses and counterclaims
- a written answer eliminates any chance that your answer will be misunderstood by the judge or court clerk who takes it
- if you need to appeal an adverse decision, a written answer provides an unequivocal record of all of the defenses and counterclaims you raised in the proceeding.

A big disadvantage to a written answer is that drafting one is a hard, time-consuming chore. The answer must follow a particular format to comply with court rules. Given the extremely short period of time within which tenants must answer, getting a written answer right is a very tall order. That's why most tenants respond orally or hire a lawyer to draft a written answer.

For the intrepid among you, we've provided a model answer you can use to draft your own answer. Just remember that written answers must be "served" on the landlord (or the landlord's attorney) as well as the judge. You can do this by handing a copy to the landlord at the hearing or mailing a copy at least three days before the date of the hearing, if the petition so demands (see Section 2b, below, for an

explanation of when you must answer three days before the hearing). There's no requirement that oral answers be served on the landlord, even if reduced to writing on a court's pre-printed answer form (discussed in the preceding section).

2. Your Right to a Jury Trial

You may have a right to a jury trial when you answer the petition. (RPAPL § 745.) However, most leases contain jury waiver clauses under which tenants give up their right to trial by jury in any legal action with the landlord. These clauses are enforceable in holdover eviction proceedings. Without a jury, any trial of your case will be heard by a judge alone. If you are a rent-controlled tenant without a lease, or your lease does not contain a jury waiver clause, you can demand a jury trial when you answer the petition.

Many tenant advocates feel that juries are good for tenants, since they tend to be more sympathetic than judges and are frequently biased against landlords. But selecting a jury is a long and elaborate process that will delay a final resolution of your proceeding. Jury selection will also require you (and your landlord's attorney) to make additional court appearances. If your lease or rental agreement entitles the prevailing party to legal fees, demanding a jury could expose you to more financial liability if you lose the case.

3. Procedure to Answer Holdover Petition

The general rule is that tenants may answer orally or in writing at the first hearing of the proceeding. The date and time for the hearing is on the notice of petition. If you are answering the petition on your court date, go directly to the room (also known as a "part") of the courthouse specified in the notice. You can give your answer to the judge, or to the judge's court attorney—an attorney employed by the court and assigned to the courtroom to help the judge resolve cases.

a. Tenant's Time to Answer, Generally

New York law requires the landlord to serve you with the notice of petition and petition holdover at least five and no more than 12 days before the hearing date listed on the notice of petition. That gives you only five to 12 days to formulate an answer. You may present your answer orally at the hearing, in your own words; or you can prepare a written

answer to hand to the judge that day. If you put your answer in writing, bring a copy for the landlord and keep a copy for yourself. The original should go to the judge for the court file.

If the notice of petition and petition was served less than five days before the hearing date (counting weekends and holidays), point this out to the judge at the first hearing. The judge may give you more time to answer or may even dismiss (throw out) the lawsuit.

b. Notice of Petition May Shorten Deadline and Change Procedure

Read the notice of petition carefully. If the notice of petition and petition holdover were served on you at least eight days before the hearing, the notice of petition may direct you to answer before a specified date, which may not be more than three days before the deadline.

EXAMPLE 1: A process server hands Sylvia a notice of petition on February 1. The notice advises Sylvia that her landlord has started an eviction proceeding against her and that she must appear in court for a hearing on February 10. The notice may direct Sylvia to answer the petition by February 7.

EXAMPLE 2: On March 15, Estelle arrives home to find eviction papers taped to the front of her apartment door. The next day, she receives two more copies of the eviction papers, postmarked March 15, by certified and regular mail. The notice of petition says that there will be a hearing of the landlord's petition on March 30, and that the tenant's answer is due March 27, three days prior to the hearing date. Estelle must go to the court clerk's office to answer the proceeding by March 27, unless that is a weekend or court holiday, in which case her time to answer is extended until the next business day. If her answer is in writing, she must deliver or mail a copy to the landlord within the same time period.

To answer orally, you must go to the office of the court clerk in the courthouse where the proceeding is scheduled to be heard (the address is on the notice) at least three days before the hearing date and give your answer to the court clerk.

If you prepare a written answer, you must first mail or deliver a copy of your answer to the landlord (or to the landlord's attorney) before filing the original answer, and an affidavit of service, at the clerk's office—all by the answer deadline set in your notice. An affidavit of service is a sworn statement that you served a copy of the answer on the landlord or the landlord's attorney. See the sample affidavit of service in Chapter 15.



You can serve the landlord on the way to court.

You can mail or deliver a written answer on the same day you file it at the clerk's office. It needn't be served the day before. Just fill out your affidavit of service before you get to court, since you'll need to present it with your written answer.

After answering, you must still appear in court. If the notice of petition requires you to go to court at least three days before the hearing to answer the petition, you must go back to court on the date specified in the petition to appear at the hearing.

4. What to Bring to Court When You Answer the Petition

Here is a checklist of documents and other materials you should bring with you to court when you answer. Keep them in a file for future court appearances.

Written notices from the landlord. Bring every copy of any notice to cure, notice of nonrenewal or notice of termination that was handed to you, posted on your door or mailed to you, including envelopes, since the postmark may help determine when service was complete.

Notice of petition and petition holdover. Bring every copy of the eviction papers (and any attachments) that were handed to you, posted on your door or mailed to you, including envelopes, since the postmark may help determine when service was complete.

Current lease, if any. If you are rent stabilized, also bring your initial lease for the apartment and all renewal agreement forms.

Correspondence to and from the landlord. Bring copies of any letters, notes or emails you sent or delivered to your landlord, the manager or building superintendent that are relevant to your dispute—for example, one or more letters notifying the landlord that you cured the lease violation that is the basis of

the suit. Also, bring copies of any relevant agreements, letters or notes which your landlord, manager or super sent to you—for example, a letter saying it was okay for you to get a pet, install a washing machine or sublet your apartment.

Primary residence documents. If you are defending a non-primary residence case or claiming succession rights to a regulated unit, bring copies of your driver's license, vehicle registration, insurance policies, tax returns, voter registration cards and other documents that show the premises are your address. We discuss an occupant's right to succeed to a rent-regulated tenant in Chapter 7.

Rent checks or receipts. If you are claiming that the landlord accepted rent after termination or making a counterclaim for a rent overcharge, you'll need to prove how much rent you paid and when.

Photos or videotape. If possible, bring any photos or videotape that demonstrate that you have cured the tenancy violation upon which you were terminated—for example, several dated photos of the sound-proofing material you installed on the walls of your music room in response to the landlord's notice to cure excessive noise.

Military papers. Under the federal and state Soldiers' and Sailors' Civil Relief Acts, a court may not enter a default judgment against a tenant in the military. In addition, persons who are dependent upon a military service member are protected from eviction. When you answer the petition, bring your military or dependent ID card, a copy of the service member's order or telegram calling them to active duty. For more details, see "Military Tenants Have Special Rights," in Chapter 15, Section F.

5. You May Name a Legal Representative to Answer the Petition for You

If you can't answer the petition yourself, because you are hospitalized or away from home to attend to business or family matters, you may hire an attorney to answer for you. Or you can appoint a "legal representative"—a person you trust and to whom you have given written authority to act on your behalf in the proceeding. When answering the proceeding, your legal representative must bring a letter signed by you that establishes the representative's right to speak for you. Be sure to identify the proceeding by its title (e.g., Smith vs. Jones) and its index number.

6. The “Default” Judgment: The Consequence of Failing to Answer

If you don’t appear in court to answer the holdover petition on the date and time specified on the notice of petition, the landlord may proceed with his case without you at a special hearing called an “inquest.” At the inquest, the landlord presents evidence to a judge, but no one is there to present your side of the case. The judge presiding at the inquest reviews the landlord’s notices and eviction papers, as well as all affidavits of service, to make sure that they are legally sufficient and appear to have been properly served.

If the landlord’s paperwork is complete, the judge may issue a possessory judgment in favor of the landlord on default. That means that the city marshal or county sheriff may apply to the court for a warrant of eviction to remove you (and any other occupants) from the rental unit, so long as ten days have passed since the eviction papers were served on you. After the court issues the warrant to the marshal or sheriff, you must be served with a notice of eviction at least 72 hours before your eviction is scheduled to take place. We discuss how notices of eviction work in Section O, below.

Military tenants are protected from default situations. See the discussion in Chapter 15, Section F, for details.

7. Stopping an Eviction When You Had No Notice

If the notice of eviction is your first notice of the eviction proceeding (in other words, you never received a notice of petition and petition), you may take these steps to stop the eviction, provided you do so immediately:

- Call the marshal or sheriff (the phone number is on the notice of eviction) and say that you are going to court to obtain an “order to show cause” to stop the eviction.
- Go to the court listed on the notice of eviction with a copy of the notice.
- Ask the court clerk for an “order to show cause” stopping your eviction on the ground that you were never served with eviction papers (the notice of petition and petition holdover) and had no notice of the proceeding until you received the notice of eviction.

- You will need to sign a statement (which gets attached to the order to show cause) swearing that you did not get eviction papers and that you have a good defense to the eviction proceeding. You may also be required to appear before a judge for a very short hearing, at which time the judge may ask questions about your statement.
- Once the judge signs the order to show cause, you will be asked to take copies of the signed order to the office of the marshal or sheriff (to stop the eviction) and to the landlord (or the landlord’s attorneys) so the landlord knows that the eviction was stopped and that she must appear at the courthouse at a hearing. The time, date and place for the hearing will be listed on the judge’s order.
- At the hearing, a judge will decide whether to “vacate” (or cancel) the default judgment. To succeed, you must show that your default was “excusable” (not getting served with eviction papers is a valid excuse) and that you have a “meritorious,” or legally valid, defense to the proceeding. You don’t need to prove your defense at this point. You need only show that you intend to raise one (we discuss defenses in Section J, below).
- If you win, the judge will issue an order vacating the default judgment and eviction warrant, ordering the landlord to serve you with eviction papers and directing you answer the petition at a scheduled hearing date. If you lose, the default judgment remains in effect and the marshal or sheriff will be directed to issue a new notice of eviction.

J. Preparing Your Answer: Available Defenses and Counterclaims

Before answering the petition, you’ll need to evaluate available tenant defenses to holdover proceedings to see if any apply to your case. This is also the time to figure out whether you have any claims of your own, called counterclaims, against the landlord.

There are two main types of defenses. The first type, which we call technical defenses, exploit any mistakes the landlord may have made when terminating your tenancy or starting the eviction proceed-

Motion to Dismiss: A Complicated Alternative to Filing an Answer

If you have received eviction papers and your landlord's reason for termination is illegal or unjustified, you'll need to go to court to defend your tenancy. At this stage, there are two possible ways to respond:

- You may "answer" the petition by responding to the landlord's claims that you have done (or not done) something that justifies your eviction. An answer asserts your defenses to the landlord's claims and makes counterclaims for items such as attorney fees. Sections I and J of this chapter explain how to answer the proceeding.
- You may file a "motion to dismiss," which asks the court to knock the lawsuit out of court before trial. Generally, these motions are based on one

or more technical defenses, such as improper service of the eviction papers or a legally insufficient notice of termination. Technical defenses may also be raised in the answer.

The pros and cons of each approach are laid out below.

Drafting, filing and serving a motion to dismiss can be especially tricky, and the rules for doing so vary from courthouse to courthouse. The mechanics of drafting a motion to dismiss are beyond the scope of this book. To get it right, we recommend that you discuss this alternative with a lawyer or conduct legal research on your own. Chapter 19 discusses how to get legal help.

Response	Pros	Cons
Motion to Dismiss	If you win, the case gets knocked out of court before trial. If you lose, you get a chance in your answer and at trial to assert different defenses and include counterclaims.	Limited to technical defenses. Paperwork is complicated. Need to hire a lawyer or be a very quick study on court procedures and deadlines on noticing, serving and filing motions.
Answer	Little or no paperwork required; may be made orally. May assert counterclaims for attorney fees and rent overcharges. May assert technical and substantive defenses.	After answer is filed, your case is deemed ready for trial. Any defense or counterclaim overlooked in the answer may be forfeited.



ing. We detail several common technical defenses in Section 2, below. The second type, called affirmative defenses, are legal justifications for staying in the rental unit, such as having already cured the tenancy violation claimed in the landlord's petition. Section 3, below, looks at affirmative defenses. Counterclaims are discussed in Section 4.

You can raise as many defenses and counterclaims as apply to your situation. If so, don't be shy about raising more than one in your answer; that's the strategy lawyers use. If the judge throws out one of your defenses or claims, you may nevertheless be successful with a different one and save your tenancy. The list of defenses and counterclaims included here is not exhaustive, and other defenses may apply to your particular situation.

A model written answer to a holdover petition ("Answers with Counterclaims and Jury Demand") appears at the end of this section. It includes all of the technical and affirmative defenses discussed here. The model is designed to help you plan your own answer and provides guidance on how an answer looks. You shouldn't use all of the defenses and claims listed in the model. Select only those that apply to you and then adapt the words to your situation.

1. The General Denial

One of the functions of a written answer, in addition to raising defenses and counterclaims, is to respond to the landlord's claims in the petition. The paragraphs of a petition are numbered, so you can respond to them one by one. One way to do this is to "admit" that certain paragraphs of the landlord's petition are true; to "deny" the truth of other specified paragraphs and, finally, to "deny having knowledge or information sufficient to form a belief" about others. (The latter is a fancy way to say, "I have no idea whether this paragraph is true or false.") This paragraph-by-paragraph approach, while tedious and time consuming, makes sense when responding to complicated lawsuits.

The quick and easy way to respond to an eviction petition is begin your answer with a "general denial" (as shown on the Answer form, paragraph 1). In a holdover proceeding, a general denial means that you are disputing the landlord's claim that you have no continued right to stay in occupancy of the rental unit. This is an acceptable way to respond to a holdover petition, since summary proceedings are designed

Has Your Landlord Sued in the Wrong Court?

Landlords may not use small claims court to evict a tenant. In New York City, eviction proceedings must be brought in the New York City Civil Court. Each branch of the Civil Court has a "landlord-tenant part" commonly known as Housing Court. The notice of petition you receive lists the address for the courthouse you're required to visit to answer the petition. For example, if you live in Queens, the landlord must file your case in the Queens County branch of the New York City Civil Court, even though the landlord's office might be in Brooklyn. If the landlord brings the case in the wrong branch of the Civil Court, the judge must transfer it to the right branch, legally known as the "proper venue." If your rental unit is located outside New York City but your landlord commences the proceeding in the New York City Civil Court, the case must be dismissed, because it is in the wrong court.

On Long Island, you landlord may choose to commence your eviction proceeding in the Nassau District Court if you live anywhere in Nassau County or in the Suffolk County District Court if you live in one of the five western towns of Suffolk County. These courts are part of the New York State Court system and should not be confused with the U.S. District Courts.

Elsewhere, eviction proceedings may be heard in a Town or Village Justice Court, a City Court or a County Court, so long as the court's geographical jurisdiction includes your locality. You shouldn't have to travel to a neighboring village, town or county court to defend an eviction proceeding.

If you are not sure whether the court has jurisdiction over your rental unit, call the clerk's office for the court listed on the notice of petition. If the case is in the wrong court, bring this to the attention of the court clerk or judge when you make your oral answer. If you are drafting your own answer, include the following as a numbered paragraph: "This court lacks jurisdiction over the proceeding because the premises are located outside the Court's geographical jurisdiction."

to be simple and expedient (though you might not think so after reading this chapter!).

2. Technical Defenses

A technical defense is based upon a procedural mistake the landlord makes when terminating the tenancy, preparing eviction papers or serving you with them. Here are the most common technical defenses New York tenants raise in their answers.

a. Improper Service of the Notice of Petition and Petition

In order for a court to have “personal jurisdiction” over you—that is, to have the power to require your presence in court and evict you from your home—you must have received a notice of petition and petition holdover in a certain manner. We explain how eviction papers must be served upon tenants in Chapter 15, Section H. The focus there is on service of written rent demands and nonpayment petitions, but the same rules—who may serve notices, who must be served and how notices must be served—apply to the notice of petition and petition in holdover eviction proceedings. If, after reading Chapter 15, Section H, you believe that the landlord served the notice of petition and petition the wrong way or didn’t follow all of the required steps (such as mailing a copy of the papers to you if the papers were taped to your front door), assert this defense in your answer. (Answer form, paragraph 2.)



Tenants who claim that the landlord’s eviction papers were not properly served upon them may unwittingly waive that defense by asserting a counterclaim for money damages against the landlord.

To avoid problems, you should elect to assert this defense or interpose a counterclaim, not both. We discuss counterclaims in Section 4, below.

To figure out whether the papers were properly served, the court may order a “traverse”—a special pre-trial hearing. The sole issue at the hearing is whether the eviction papers were properly served on you. The landlord may prove service through the testimony of a witness, such as a process server, or through documents, such as an affidavit of service. If service is found to have been proper, the case stays in court. If the judge finds that service was improper,

the entire proceeding is dismissed. The landlord may start over by serving you with a new notice of petition and petition.

b. Improper Service of a Required Notice

Notices to cure, notices of termination and notices of non-renewal must be delivered or sent to you in the manner set forth in the “notices” section of your lease. Usually, leases permit notices from the landlord to be mailed by certified or registered mail. If you are a rent-controlled tenant with no current lease, the notice should be served in the way described in the “notices” section of the expired lease, if it still exists. If the lease doesn’t contain a “notices” clause or any direction about how notices must be served, you can’t claim that the landlord served it the wrong way. If the landlord failed to follow the lease, state this in your answer. (Answer form, paragraph 3).

When landlords serve a required notice the wrong way, some judges throw out the proceeding and make the landlord start all over again. Others permit the case to go forward. To prove the defense of improper service, you’ll need to bring to court any eviction papers you received, including the envelopes in which you received them.

c. Failure to Provide a Required Notice

In most cases, a landlord must give a tenant one or more required notices before starting a holdover eviction case. (The only exceptions are when a tenant refuses to move out after the lease expires and when an unregulated tenant uses the rental unit for an illegal or immoral purpose.) The landlord has the burden of showing that you were properly served with a termination notice. The landlord’s failure to give a required notice before starting a holdover eviction proceeding usually results in dismissal. (Answer form, paragraph 4).

d. Legally Insufficient Notice

To be effective, a notice to cure, notice of non-renewal and notice of termination must contain certain essential information. If the landlord makes a mistake or forgets to provide all the information that’s required, a judge may decide that the notice is legally insufficient to end the tenancy and dismiss the eviction proceeding. For more information, see “Attacking a Notice in Your Answer,” below. (Answer form, paragraph 5.)

Attacking a Notice in Your Answer

One tactic frequently used by tenants answering holdover petitions is to mount an attack on the landlord's notice to cure, notice of termination and/or notice of nonrenewal. If a judge finds that the landlord failed to give a required notice, gave the wrong notice or forgot to include the right information on a notice, the eviction proceeding may be dismissed. To figure out whether you may attack a notice (or the lack of one), carefully read your lease and Section B, above. Then see how the notices you have received compare to the requirements. You may raise one or more mistakes in your answer as technical defenses to the proceeding. Here are some common landlord mistakes you'll want to check for:

- **Did the landlord give you the correct notice or notices?** For example, failing to give you a required notice to cure is a landlord oversight that can end the eviction case. Similarly, getting a notice of termination when you were entitled to a notice of nonrenewal is a serious error. Sections B through E, above, describe the notice or notices you must receive before your landlord may start a holdover eviction proceeding. If your landlord neglected to give you a required notice, state this as a defense in your answer. (Answer form, paragraph 4.)
- **Did the landlord give you the proper amount of notice?** Another serious mistake is giving you less than the required amount of notice—that is, the number of days you have to cure a default (in a notice to cure) or to move out (in a termination notice) is a serious landlord mistake. For example, if you received a seven-day notice of termination when you were entitled to 30 days, the notice is improper. Sections B through E, above, describe

how much notice you must receive depending on the reason your landlord is evicting you. If your landlord gave you too little notice, state this as a defense in your answer. (Answer form, paragraph 5.)

- **Did the termination notice contain the legally required wording?** New York law requires notices to clearly and unequivocally advise you what you did wrong or how you violated your tenancy. A notice that simply says that you have five days to cease violating the lease or leave is legally insufficient. The landlord must explain what you did (or did not do) to violate your lease or tenancy—for example, that you replaced the windows in your apartment without landlord consent, which is prohibited by your lease. Section B describes the points that must be covered in each notice to be legally sufficient. If you receive a notice that is missing required wording, raise this in your answer (Answer form, paragraph 5)
- **Did the landlord or an authorized agent sign the notice?** New York law requires that the landlord or the landlord's authorized agent, such as a manager or attorney, sign all termination notices. The reason for the requirement is so you know whether the person who issued the notice is authorized to terminate your tenancy. If you receive a notice to cure or a termination notice from an unknown attorney or third party with whom you have never dealt, raise this in your answer (Answer form, paragraph 5.)

To attack a notice, you'll need to bring to court any notices you received, including any envelopes in which they were mailed to you.

e. Improper Petitioner

A holdover proceeding may be brought only against a tenant by the landlord, the lessor, a receiver, a purchaser at a foreclosure or tax sale of the property or a tenant (if you are a subtenant). (RPAPL § 721.) If the proceeding lists your landlord's attorney or manager, or some other person or entity that you've never gotten notice about or heard of, raise this defense in your answer. (Answer form, paragraph 6.)

3. Affirmative Defenses

Your answer should next state what the law calls affirmative defenses—good legal reasons that excuse what would otherwise be grounds for eviction. For example, if you're being evicted for having a dog in violation of a no-pet policy and you are sight-impaired, you could explain that you need the dog to accommodate your disability (but be sure you can back up your need for a service animal with a doctor's letter, as explained in Chapter 11, Section A). One key difference between technical defenses and affirmative defenses is that technical defenses need only be raised in the answer—the judge takes it from there. With affirmative defenses, the tenant has the burden to prove the defense using documents, photos, witness testimony or other evidence.

The following sections list some of the most common affirmative defenses raised by tenants in holdover evictions. In the event that your case goes to trial, you will need to be able to prove your affirmative defenses with the evidence suggested below.

a. Cure by the Tenant

Assert this defense if you received a notice to cure and have already fixed (or have undone) the lease violation cited in the notice to cure. (Answer form, paragraph 7.)

The evidence you'll need depends on the nature of the violation. If, for instance, you were using your apartment for a business purpose but have moved your business to a new location, bring your new lease, office letterhead or business cards showing an address other than your rental premises. Photos of your new space and your rental unit, and moving receipts would also bolster your claim. Short of proof, you may offer the landlord (and the judge!) an opportunity to inspect your apartment to see with their own eyes that you've corrected the violation.

b. Retaliatory Eviction

A landlord may not terminate your tenancy to get even with you for filing a housing complaint to a government agency like the NYC Department of Housing Preservation and Development (HPD), filing a lawsuit or organizing or joining a tenant association. (Answer form, paragraph 8.)

For details on when you may assert this defense, read Chapter 11, Section D. You will need to prove the event that triggered the retaliation, such as a copy of a housing violation issued in response to your complaint, a copy of your complaint to DHCR or some other government agency, a copy of your lawsuit papers, or testimony from fellow tenants as to your forming or joining a tenant association.

c. Pending Discrimination/Harassment Complaint Against Landlord

If you have filed a discrimination complaint with a human rights agency or a harassment complaint with the DHCR against your landlord, point this out in your answer. (Answer form, paragraph 9.) While courts, as well as administrative agencies, have the power to decide claims of discrimination and harassment, judges presiding over eviction proceedings in which the tenant has raised discrimination or harassment claims will sometimes defer resolution of the dispute to the agency, which is presumed to have specialized experience or expertise. As a result, the eviction proceeding is "stayed," or put on hold, while the tenant's discrimination or harassment complaint is before the agency. (Chapter 11 has details on the grounds and procedure for filing discrimination and harassment complaints against landlords.)

Not every allegation of discrimination or harassment operates to stay summary eviction proceedings. There must be a "nexus," or close connection, between the ground for eviction and the claim of discrimination or harassment.

EXAMPLE 1: A Bronx landlord commenced a holdover proceeding against a tenant on the grounds that the tenant violated the no-pets clause in the lease by keeping a dog. The tenant, who suffered from renal disease and retinal detachment, claimed that the dog was a medically necessary "comfort animal." After the proceeding had begun, the tenant filed a disability discrimination complaint with the State Division of Human Rights, and requested that the eviction proceeding be

stayed, pending a determination of the complaint. The judge presiding over the eviction case granted the stay, finding that if the Human Rights agency determined that the landlord engaged in discriminatory conduct, the landlord had no reason to evict the tenant. (*90-10 149th Street v. Badillo*, NYLJ, 9/24/92, p. 24, col. 3 (App. Term, 1st Dep't).)

If you request a stay, you can be fairly certain that the landlord will object by claiming that she has an adequate non-discriminatory basis for the eviction proceeding.

EXAMPLE 2: Two subtenants remained in their apartment without permission after their sublease expired. When the landlord attempted to evict them, the subtenants filed a discrimination claim against the landlord, claiming that they weren't offered renewal leases because of their sexual orientation, and then sought a stay of the eviction proceeding. The court refused to put the eviction proceedings on hold. Since the subtenants had no legal right to a renewal lease or to remain in occupancy, the landlord was entitled to possession of the apartment. (*Ennismore v. Gottlieb*, NYLJ, 6/8/95, p. 31, col. 5 (App. Term, 1st Dep't).)

To prove that your claim is pending, attach a copy of your discrimination or harassment complaint to your answer. Also attach any documentation from the agency acknowledging receipt of your complaint or assigning your case an index or docket number.

d. Landlord Waiver

To enforce a tenant violation of a lease or rent-regulation, the landlord must act quickly. Otherwise the landlord's inaction may work to "waive," or give up, any right to object to the violation, even if the landlord didn't intend to give up his right to object. (Answer form, paragraph 10.) The judge will decide whether a landlord's actions amount to a relinquishment of his right. For example, a landlord's acceptance of rent with knowledge of a lease default, and without an effort to terminate the lease, may trigger an inference that the landlord has elected to ignore the default.

Say, for example, that you install a washing machine in violation of the lease and without the prior permission of the landlord. The landlord sees the appliance

in your rent-stabilized apartment during a smoke detector inspection, but says nothing. Eighteen months later, your landlord attempts to evict you on the ground that you have installed the washer. If you raise the defense of waiver, a judge might rule that by waiting so long to object to the appliance, the landlord gave up his right to enforce the no-washing machine rule, and refuse to permit an eviction based on the violation.



A "non-waiver" clause in your lease may defeat this defense.

Some leases contain a "non-waiver" clause which says that the landlord's acceptance of rent with knowledge of a lease violation will not be deemed a waiver. Such clauses are usually enforced, which means that your defense will not be considered. Chapter 2 has more information on non-waiver clauses.



Pet waiver laws may help you keep Fido, after all.

A waiver may also be created by statute. Under "pet laws" in New York City (NYC Admin. Code § 27-2009.1) and Westchester County, lease provisions prohibiting pets are deemed waived if a landlord (or the landlord's agents) know about a pet but refuse to take affirmative action to terminate the tenancy within three months of discovering the pet. If you are being evicted for harboring a pet in violation of a no-pets clause in your lease, raise this law as a defense if the landlord knew of the pet more than three months before you were served with eviction papers. The pet laws apply even if your lease contains a non-waiver clause. Check for a similar law in your locality.

e. Acceptance of Rent After Termination

In some cases, your landlord may reinstate your terminated tenancy by accepting rent after ending your tenancy. If your landlord has continued to accept rent from you for a period following the termination of your tenancy but before starting an eviction proceeding, assert this defense in your answer. (Answer form, paragraph 11).

For evidence, bring to court any canceled checks, traced money orders or rent receipts that prove when rent was accepted.

f. Rent-Regulated Units: Succession Rights Protect Loved Ones From Eviction

When a rent-stabilized or rent-controlled tenant passes away or moves out, a family member or roommate

of the tenant may decide to remain living in the apartment. The landlord usually wants the apartment back, however, so the landlord issues a termination notice to anyone who remains living in the apartment, purporting to end whatever rights they might have to stay in the unit. In some situations, though, New York law protects non-tenant occupants from eviction from rent-regulated units.

Here's the rule: If you are a family member or life companion to a rent-regulated tenant who moved out or died, you may avoid eviction if you can satisfy a minimum residency requirement.

Who's a family member or life companion? A family member is defined as a spouse, child, stepchild, parent, stepparent, sibling, grandparent, grandchild, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant. Unrelated (including same-sex) occupants who have had long-standing familial relationships with the tenant may also hold succession entitlement to the apartment. Unrelated occupants must show an "emotional and financial commitment and interdependence" with the tenant comparable to that of a family unit. Evidence of a sexual relation-

ship (or lack thereof) is not determinative and may not be considered. (9 NYCRR §§ 2520.6(o); 2104.6(d)(3); 2204.6(d)(3); 2500.2(n)(2).)

Residency requirement. In addition, you must demonstrate that, prior to the tenant's move-out or death, you principally resided at the premises for whichever of the following time periods is shorter:

- for at least two years (one year if you are disabled or over 62 years of age)
- from the beginning of your relationship with the tenant, or
- from the inception of the tenancy.

To prove that you resided at the premises for the required time period, you'll need dated, documentary evidence showing that you lived at the rent-regulated apartment, such as a driver's license, voter registration card, tax returns or bank statements.

To prove your family relationship to the former tenant, you may use birth certificates, death certificates or wills. For life companions, the rent regulations identify eight factors to be considered when determining if the requisite emotional and financial relationship existed between you and the tenant. Any documents or testimony you can produce that supports one or more of the following factors will help establish your right to stay on as a tenant:

1. a long-standing relationship with the tenant
2. sharing, or relying upon the other for, household or familial expenses or necessities
3. intermingling finances by keeping joint bank accounts, credit cards, loans and/or jointly owning personal and real property
4. jointly engaging in family-type activities, such as attending social functions and recreational activities, family events and holiday celebrations
5. formalizing legal obligations to reinforce the existence of your bond, by way of wills (naming each other as executor and/or beneficiary), powers of attorney, healthcare proxies, a personal relationship or living together contract, a domestic partnership declaration or other comparable documentary evidence
6. publicly affirming your familial affiliation by way of your words or deeds
7. regularly performing familial tasks, such as attending to the other's care or caring for the other's extended family members, or
8. engaging in any other behavior or action evidencing a "long-term, emotionally-committed relationship".



EXAMPLE: A Manhattan occupant was permitted to succeed to a rent-stabilized apartment when it was established that he had lived in the unit with the tenant of record for ten years, that they had vacationed and traveled in common and “held themselves out as a couple.” Additionally, the occupant had cared for the tenant during his “final illness” and was designated executor and beneficiary of the tenant’s residual estate under a will and the beneficiary of a trust account. (*RSP Realty Associates v. Paegeo*, NYLJ, 8/14/92, p. 21, col. 4 (App. Term, 1st Dep’t).)

If you meet the above requirements, include this as a defense to your answer. (Answer form, paragraph 12.) You may remain in the apartment as the legal successor tenant, entitled to all of the rights and protections afforded rent-regulated tenants, as discussed in Chapter 4.

Check out DHCR Fact Sheet #30, “Succession Rights,” for more information. You may order it from the DHCR Rent InfoLine (718-739-6400), read, print or download it from the DHCR website (www.dhcr.state.ny.us) or visit your local DHCR office (see Appendix A for addresses).

4. Asserting Counterclaims

A counterclaim is a claim a tenant makes against the landlord, such as damages for retaliation eviction. It can be raised orally or contained in the written answer, following the general denial and defenses. While tenants may technically use as a counterclaim *any* claim they have against the landlord, practically speaking, there are two legal roadblocks that limit your counterclaim rights.

The first roadblock, a “counterclaim waiver” clause, is buried in most written leases and rental agreements. It bars the tenant from raising a counterclaim against the landlord in any action or proceeding. Judges honor counterclaim waiver clauses in holdover proceedings by “striking” from the answer any counterclaim made by a tenant whose lease or rental agreement contains a counterclaim waiver clause. Once a counterclaim is struck, it is as if it had never been raised in the first place.

That said, there is one exception. A counterclaim waiver clause will not bar a tenant’s claim that is “inextricably related,” or part and parcel, of the landlord’s claim for possession of the rental unit.

Even if your lease or rental agreement does not contain a counterclaim waiver clause, the judge has discretion to “sever” any counterclaims that are unsuited to a summary disposition. Unlike a regular lawsuit, a summary eviction proceeding is designed to move very quickly. There’s no automatic right to take depositions or engage in discovery (the process in which documents and testimony may be demanded from one’s adversary) or other procedures that slow cases down. For example, if you raised a negligence counterclaim for money damages resulting from a burglary or assault you suffered, the judge may “sever” it from the eviction proceeding. Your negligence claim is “preserved” and you may continue it in a separate legal action. But the judge won’t let it slow down the eviction proceeding.

Here are the types of counterclaims that may be heard in a holdover proceeding. They are usually unaffected by a counterclaim waiver clause in the lease:

- 1. Retaliatory eviction.** (Answer form, paragraph 13.) Landlords who violate New York’s anti-retaliation statute are subject to civil damages. (RPL 223-b (3).) A tenant may assert retaliatory eviction both as an affirmative defense to eviction and as a counterclaim for money damages. For more information on retaliation, go to Chapter 11, Section D.
- 2. Attorney fees.** (Answer form, paragraph 14.) If your landlord has reserved a right to attorney fees in the lease or rental agreement, you have a reciprocal right under law (for more information, see Chapter 2).



Additional counterclaims, such as damages for a rent overcharge or the landlord’s breach of the warranty of habitability, may also apply to your case.

While tenants in nonpayment proceedings customarily raise these counterclaims, some judges permit them to be heard in holdover cases, as well. For more information, go to Chapter 15, Section I.

The sample tenant’s answer to holdover (“Answer with Counterclaims and Jury Demand”), shown below, is designed to help you plan your own answer and provides guidance on how an answer looks. You shouldn’t use all of the defenses and claims listed here. Select only those that apply to you and then adapt the words to your situation.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

123 Realty Company, Inc.,

Landlord-Petitioner,

-against-

Christiana Ricci,

Tenant-Respondent.

**ANSWER WITH COUNTERCLAIMS AND
JURY DEMAND**

L&T Index No. 76532/03

Tenant-Respondent, Christiana Ricci, as and for his answer to the Petition, alleges as follows:

1. Tenant interposes a general denial to the petition.
2. Landlord failed to serve the Notice of Petition and Petition in the manner provided by Real Property Actions and Proceedings Law ("RPAPL") § 735, in that service was not attempted at the premises on the dates or times alleged in the affidavit of service.
3. Landlord failed to serve a required notice to cure before terminating the tenancy.
4. Landlord failed to serve a required termination notice before commencing this proceeding.
5. The purported notice of termination was factually and legally insufficient to terminate the tenancy. Specifically, the notice was fatally vague, equivocal, and indefinite, inasmuch as it:
 - (i) failed to set forth the grounds upon which the tenancy was terminated or the facts establishing said grounds;
 - (ii) failed to set forth a specific date upon which the premises were required to be vacated;
 - (iii) failed to set forth the legal consequences of the tenant's refusal to vacate; and
 - (iv) was issued by a person lacking authority to terminate the tenancy.
6. Petitioner 123 Realty Corp. is not the landlord or other entity authorized under Real Property Actions and Proceedings Law ("RPAPL") 721 to commence this summary proceeding.

FIRST AFFIRMATIVE DEFENSE

7. Respondent has cured the tenancy violation alleged in the petition by removing the dog from the premises before the expiration of the notice to cure.

SECOND AFFIRMATIVE DEFENSE

8. Landlord has commenced this proceeding in retaliation for tenant's harassment complaint filed January 15, 200x, with the New York State Division of Housing and Community Renewal, which is currently pending before that agency (another example: complaints to the New York City Housing Preservation and Development ("HPD") about the lack of heat and hot water in the premises) in violation of Real Property Law ("RPL") 223-b.

THIRD AFFIRMATIVE DEFENSE

9. Prior to the commencement of this eviction proceeding, the tenant, who is disabled and is required by her physician to keep an emotional-support pet, filed a complaint (Docket # SS-1440-03) with the New York City Human Rights Commission on the ground that the landlord's enforcement of the no-pet clause in the tenant's lease violated New York City Human Rights Laws. The proceeding is scheduled to be heard by the Commission on May 5, 200x. Since the prior proceeding now pending with the Commission is based on the identical issue before this court, it is respectfully requested that this Court defer jurisdiction to the agency and stay this proceeding pending the final outcome of the prior proceeding. (A copy of the tenant's complaint and the Commission's notice of hearing is attached to this Answer.)

FOURTH AFFIRMATIVE DEFENSE

10. The landlord has waived its right to commence this proceeding because it has known about the installation of tenant's washing machine and has continued to accept rent from tenant for more than seven months before issuing a notice to cure.

FIFTH AFFIRMATIVE DEFENSE

11. During the three-month period following the issuance of the termination notice and prior to the commencement of this proceeding, the landlord accepted, deposited and/or failed to return tenant's monthly rent checks, thereby waiving the alleged default(s), canceling the termination and reinstating the tenancy.

SIXTH AFFIRMATIVE DEFENSE

12. The premises are rent-stabilized (or rent-controlled) and tenant has a right to remain in the apartment as a successor tenant under the succession provisions of applicable rent laws and regulations.

FIRST COUNTERCLAIM

13. Landlord has commenced this proceeding in retaliation for tenant's harassment complaint filed January 15, 200x, with the New York State Division of Housing and Community Renewal, which is currently pending before that agency (another example: complaints to the New York City Housing Preservation and Development ("HPD") about the lack of heat and hot water in the premises) in violation of Real Property Law ("RPL") 223-b.

14. Landlord's violation of RPL 223-b has damaged tenant in the sum of at least \$15,000.

SECOND COUNTERCLAIM

15. The subject lease (rental agreement) includes a provision for the landlord's recoupment of legal fees, costs, and disbursements.

16. Pursuant to Real Property Law ("RPL") § 234, Respondent is entitled to a reciprocal right to the recovery of such fees and costs.

17. By reason of the foregoing, Respondent is entitled to judgment for its attorneys' fees and costs, in an amount to be determined at a hearing or at trial, but believed to equal or exceed the sum of \$3,000.

WHEREFORE, Tenant respectfully requests that this Court:

- 1) dismiss the Petition, (or, in the alternative, stay this proceeding until a final determination is rendered in the harassment proceeding now pending before DHCR),
- 2) award Tenant judgment on Tenant's counterclaim for damages due to retaliatory eviction in the sum of at least \$15,000,
- 3) award Tenant judgment on Tenant's counterclaim for attorneys' fees and costs in the sum of at least \$3,000,
- 4) and grant such other and further relief as to this Court may deem just and proper.

JURY DEMAND

Tenant demands a trial by jury in this proceeding.

Dated: March 22, 200x
New York, New York

Christiana Ricci

Christiano Ricci
Tenant-Respondent

To:
Clerk of the Civil Court of the City of New York

Billings and Hurst, LLP
Attorneys for Petitioner-Landlord
225 Broadway, Suite 705
New York, NY 10007
(212) 619-7676

NYC's Rent Deposit Law Applies to Holdover Proceedings

Once a holdover proceeding is initiated against you, the landlord may be entitled to request a deposit of “use and occupancy,” the legal term for rent payable after the termination of a tenancy. For details on when New York law entitles your landlord to request a deposit, see Chapter 15, Section J.

K. The First Court Date

Summary eviction proceedings move fast. The date for the first hearing of your eviction proceeding, which is listed on the notice of petition, must be within five and 12 days of the date the eviction papers were served to you. Here's a rundown on what to expect.

1. Checking In

Get to court early on the first court date so you can find the courtroom, familiarize yourself with the rules for that courtroom and find your case on the court's calendar. The “calendar” is a list of cases scheduled to be heard that day in that courtroom. Next to the case is a calendar number, which you should jot down. Cases are called in calendar-number order.

All judges have their own rules on how tenants should “check in” and how they should answer the calendar. The rules should be posted near the courtroom entrance. If not, ask the judge's law clerk (who usually sits at a desk near the judge's bench) or a court officer for information on how to check in and answer the calendar. This is an important step to avoid having a default judgment taken against you.

When your case is called on the first court date, you can ask for an adjournment if you need more time to prepare a defense. We discuss adjournments in Section 2, below.

If you are prepared to defend your case on the first hearing date, you have a choice. You can try to resolve the case with your landlord by negotiating a stipulation of settlement, which is an agreement that ends the case. A stipulation in a holdover proceeding might call for the tenant to cure a lease violation

within a short time frame or face eviction, or it may permit the tenant to stay in occupancy for an agreed-upon length of time. Ninety percent of landlord-tenant cases are resolved this way and never go to trial. We discuss stipulations of settlement in detail in Section L, below.

2. Adjournments

Because the first hearing occurs so soon after you're served with eviction papers, you may not have had enough time to evaluate your legal options—let alone prepare for a trial. If you need more time to analyze your legal remedies, gather evidence or retain legal counsel, you may ask for an adjournment. Adjournments of summary proceedings tend to be short—about five to eight days.

The procedure for requesting an adjournment varies, depending on the rules in the courtroom to which your case has been assigned. In some courtrooms, the judge's court attorney has authority to grant automatic one-time adjournments to tenants—no questions asked. Others grant automatic adjournments only when the landlord (or the landlord's attorney) consents. You'll need to go before the judge to request your adjournment if the landlord won't consent or if the court attorney is not authorized to schedule one.



Tenants who have not yet answered the petition should request an extension of their time to answer, too. Your answer is due at the first hearing of the eviction proceeding. When requesting an adjournment of the first hearing, ask for an extension of your time to answer the petition too. That will ensure that you'll be permitted to answer on the adjourned hearing date.

When requesting an adjournment from a judge or court attorney, be specific as to why you need more time—for example, to research your legal position, to gather documents and witnesses to prove a defense or counterclaim, or time to hire an attorney. Some judges permit second adjournments as well if the landlord (or the landlord's attorney) consents.



New York City tenants who request a second adjournment may be required to deposit “use and occupancy” rent with the court or landlord. (See Section L, above, for details).

If you can't work out a settlement agreement with the landlord, the eviction case must proceed to trial. If you and your landlord are "ready for trial," meaning that you have the photos, documents and witnesses you need to defend your tenancy readily available, the trial may begin as soon as that day. But if the trial court's calendar is congested with other cases, or if you or your landlord are not prepared to go to trial, the judge may order you to return to court at a future date and time for trial. At that time, you must have all of your documents and witnesses ready.



It is the rare housing court case that makes it to trial on the first court date. Holdover cases are first assigned to a "resolution part" where you will be encouraged to settle the case with the landlord. If you don't wish to speak to the landlord directly, but wish to resolve the case, you may ask the court attorney to help you. In some boroughs, you can ask for your case to go before a trained mediator who will sit down with you and the landlord to help hammer out a settlement. If a settlement cannot be reached, the case is reassigned to a "trial part" courtroom for trial. Section M discusses trials.

L. Entering Into a Stipulation to Settle a Holdover Proceeding

Most holdover proceedings never go to trial. The vast majority of cases are settled by an agreement negotiated between the landlord and tenant, known as a stipulation of settlement. One common settlement scenario is for the tenant to agree to cure the lease violation within a short time frame in exchange for the landlord dropping the lawsuit. To give the agreement teeth, the stipulation may provide that the tenant's failure to timely cure will result in the tenant's eviction—without a trial. Another common settlement scenario is for the landlord to permit the tenant to remain in occupancy until an agreed-upon future date, in exchange for the tenant's consent to an eviction judgment, which gets "stayed," or postponed, through the agreed upon move-out date. If the apartment is rent-regulated, the landlord might sweeten the deal by offering the tenant free rent during the stay period. If the apartment is likely to fetch a big rent on the open market, the landlord may offer the tenant a lump sum payment upon move-out. Of course, the stronger the landlord's case, the

less likely you'll be offered these types of monetary compensation. It all depends on the circumstances of your particular case.

EXAMPLE: Susan, a Manhattan rent-stabilized tenant, receives a notice of non-renewal advising her that her lease, which expires three months later, will not be renewed on the grounds of non-primary residence. On February 10, a process server hands Susan eviction papers. On February 22, Susan appears in court.

While waiting for her case to be called, the landlord's lawyer approaches Susan and offers her \$10,000 to move out. Susan's landlord plans to renovate the apartment and put it on the market for \$5,000 per month. Since Susan plans to get married and move to New Jersey in June, she agrees to move out on May 31.

A stipulation of settlement is drawn up in which Susan consents to a "final judgment of possession in favor of the landlord, the issuance of a warrant of eviction forthwith, with execution stayed through and including May 31, 200x." The landlord agrees to waive rent through May 31, 200x, and to pay Susan \$10,000 upon her "timely vacatur" of the apartment. That means that Susan may live rent-free in the apartment until May 31. If she moves out on or before that time, the landlord will pay her \$10,000. If she doesn't move out on time, she gives up the \$10,000 and may be evicted—without a trial—upon as little as 72 hours' notice from the City Marshal.



Don't expect a level playing field in landlord-tenant court. Landlords are usually represented by counsel. If you hire an attorney to represent you in court, your lawyer will hash out the terms of the agreement with the landlord's attorney. If you appear in court without an attorney, the landlord will try to hammer out an agreement with you, write up a settlement stipulation and pressure you to sign it right away. To avoid this, ask the landlord's attorney to consent to a short adjournment so you can have the stipulation reviewed by a lawyer. (This will be cheaper than bringing a lawyer to court with you.) If the landlord refuses, you can ask the judge for an adjournment so that you can get an attorney.

A stipulation's terms may be negotiated either in or out of court. While the final document may be drafted and prepared in an attorney's office, the

majority are usually handwritten on blank, three-part forms available in most courtrooms. Once the settlement terms are hammered out, you and the landlord go before a judge to have the agreement “so-ordered” by the presiding judge or judicial hearing officer. That gives the agreement the authority of a court order. Alternatively, the terms of an oral stipulation may be explained to the judge by the landlord’s attorney and recorded by a court stenographer or audio tape recorder. Putting your agreement in writing is a far better practice, because you’ll leave court with a copy of the agreement you can refer to later on. That’s far easier and cheaper than ordering a transcribed version from the court if you need it.

This section reviews the essential elements of a holdover proceeding settlement. If the landlord’s lawyer wants to use her own pre-printed stipulation form, remember that you have the right to negotiate every word, and you should cross out any words or clauses that you haven’t specifically agreed to and understood. If you are hearing-impaired or have difficulty reading or understanding English, you have the legal right to request a court interpreter to translate the terms of the stipulation before you sign it.



You can expect to feel pressure from the landlord and even the judge to settle your case by stipulation. If you don’t understand what the agreement says, ask a court attorney or a judge to explain it to you. Always remember—every tenant is entitled to reject the landlord’s settlement offer and go to trial. We discuss going to trial in Section M, below.

1. If You Want More Time to Cure

If the landlord offers to settle the proceeding by granting you additional time to correct the lease or tenancy violation alleged in the holdover petition, the stipulation should:

- specify the nature of the lease or tenancy violation
- describe the action or conduct you have agreed to undertake (or will refrain from taking), and
- set a reasonable deadline within which you are confident you can correct the violation. (This time span is sometimes referred to as a “probationary period.”)

Here is an example of what such a stipulation might say:

EXAMPLE: “Tenant acknowledges that he has illegally altered the subject apartment by installing a partition-wall in the bedroom of the subject apartment without the permission or consent of the petitioner-landlord and without securing the appropriate governmental approvals and/or permits. Respondent agrees to remove said partition by or before September 30, 200x, and to restore the walls and floors of the subject bedroom to their original condition.”

2. If You Want More Time to Move

Another settlement scenario is where the landlord agrees to give you more time to move out, in exchange for your consent to a judgment in favor of the landlord. In such cases, the stipulation should:

- specify the date in which you have agreed to move
- address what will happen to the security deposit by what date—for example, applied to last month’s rent or fully refunded to you within ten days of your moving out
- cover any buy-out agreements. For example, if the landlord will pay you to vacate the premises, the stipulation should include a provision detailing the specifics of the deal. The provision should address the amount, form of payment (cash, check, certified check or money order) and the manner in which the payment is to be delivered (hand delivery to you, overnight or certified mail to a specified address).



Give up as little as possible. Some landlord attorneys will attempt to get you to waive some of your defenses and give up all your counterclaims as a condition to entering into a settlement agreement. They do this by adding paragraphs like this to the agreement: “Respondent [that’s you] consents to the jurisdiction of this Court, and waives any and all jurisdictional defenses and withdraws its counterclaims.” If your answer didn’t raise any technical defenses or assert any counterclaims (see Section J, above), it doesn’t matter. You’re not giving anything up. But if you made a counterclaim for a rent abatement, or triple damages for a rent overcharge, for instance, try to settle the case without giving these up. That preserves your right to pursue the claims later, in small claims court, for instance.

3. Payment of Rent

Stipulations usually contain a provision that addresses rent (sometimes called “use and occupancy”) after the termination date. The stipulation states that rent will be payable through the date of the stipulation and into the future. If you agree to cure the tenancy violation over a protracted period, your landlord will probably insist on inserting a provision that says that you will continue to pay monthly rent during the probation period. Similarly, if you have agreed to move out, your landlord will insert a clause obligating you to pay “use and occupancy” (post-termination rent) until you move out.



The obligation to pay rent or use and occupancy in the stipulation means that you risk immediate eviction if you miss a payment (or are even late). To avoid any ambiguity, make sure the monthly rate of rent or use and occupancy is stated in the agreement, and that you can afford to make the payments on a timely basis.

4. Consequences of a Default

The stipulation should clearly describe what will happen if you or the landlord “default”—that is, fail to live up to a promise that either one made in the stipulation. It’s essential that you understand what will happen if you don’t cure a lease violation by the deadline set in the stipulation, or don’t move out on or before an agreed-upon date. Stipulations usually provide for one of the following consequences for your default:

- **“Restoration of the case to the court calendar.”** This means that if you or the landlord breaks a promise, the proceeding will go back to court and you will need to either work out a new settlement or go to trial. This is absolutely the best deal you can make, since there is no threat of immediate eviction hanging over your head.
- **“Issuance of a final judgment of possession in favor of the landlord.”** This means that if you break a promise, the landlord will automatically win the eviction proceeding—without a trial. Once the judgment is entered (processed through the court clerk’s office), the landlord can send the judgment to the marshal or sheriff, who can then ask the court to issue a warrant of eviction. When the warrant is issued, the

marshal or sheriff can serve you with a notice of eviction and then evict you.



If you consent to a judgment in the stipulation, that judgment may not be appealed. Judgments issued by judges after a trial or hearing may be appealed to a higher court. The court that hears the appeal reviews the record to see if your judge made a mistake when applying the law to the facts of your case. The appellate court may affirm the judgment, if the judge was right, reverse the judge if there was an error or modify the judgment to make it right. Get prompt legal assistance if you are considering an appeal.

- **“Issuance and entry of final judgment of possession in the landlord’s favor, with the issuance of a warrant of eviction “forthwith” and execution stayed pending the tenant’s correction of the default (or timely move out).”** This means that before you even break your promise, the marshal or sheriff can obtain a warrant of eviction from the court. If you break your promise, the marshal or sheriff can evict you on as little as 72 hours’ notice. This is the best deal for the landlord.



Be careful about attorney fees provisions. You and the landlord may want to reserve a right to attorney fees in the event of a default by the other. Stipulations that are silent in this regard waive the recovery of fees. Don’t insist on a right to attorney fees unless you are confident that you will be able to perform all of the tenant obligations under the stipulation.

5. Termination of the Proceeding

What happens if the landlord and tenant both keep their promises? The stipulation should contain a clause says that once everyone fully complies with the agreement’s terms and conditions, the landlord’s case will be deemed “withdrawn” or “discontinued with prejudice.” That way, the eviction case against you doesn’t stay open indefinitely.

6. Going Before the Judge

Everything that you and the landlord agree to should be included in the stipulation. Once it is written up, it goes to the judge to be “so-ordered.” That gives the agreement the authority of a court order. Make

sure that you get a so-ordered copy of the stipulation so that you don't forget what you agreed to do. Some judges will call you to the bench and ask you whether you understand everything that is in the agreement. Others simply review them at the bench without so much as looking at you.



In New York City's Housing Court, judges are required to recite on the record the terms and conditions of any settlement reached with a landlord or tenant who appears in court without an attorney.

This happens whether or not you are using a written stipulation. This requirement is helpful to unrepresented tenants because the judge will explain any legalese in the agreement before "so-ordering" it, to make sure that you understand its legal consequences.

M. Trial and Judgment

If you can't work out a settlement with the landlord, your case must go to trial—either before a jury (if you so request) or a judge. While trial practice is beyond the scope of this book, here is an overview of a trial of a holdover proceeding. Throughout this section, we assume that the landlord is represented by counsel, which is usually the case.

1. Selecting a Jury

If you demanded a jury trial, you and the landlord's attorney must select a panel of six persons from an array of citizens who have been summoned to jury duty. Each of you may ask questions of potential jurors during a process called the "voir dire." The elaborate system for challenging and objecting to potential jurors is beyond the scope of this book. Chapter 19 suggests legal resources you may turn to for more information. For details on jury trials in an eviction proceeding, see Section I2, above.

2. Opening and Closing Statements

An opening statement gives you and the landlord's attorney an opportunity, at the very beginning of the trial, to acquaint the jury (or a judge in a non-jury trial) with the issues and the evidence you intend to present. In non-jury trials, judges sometimes skip opening statements and familiarize themselves with

the issues by reviewing the landlord's petition and the tenant's answer.

After the landlord and you present your case through witnesses, documents, photos and other evidence (described below), you may make a closing statement, called a "summation." That's your time to poke holes in the landlord's case and reiterate your positions.

3. Landlord's Case

The trial begins with the landlord's case. To win, the landlord must prove the following elements:

- that the petitioner in the holdover proceeding is the owner, landlord, overtenant or other person or entity authorized under law to bring a summary proceeding
- you are in "possession" (occupancy) of the premises without the permission of the landlord
- your lease expired or your tenancy terminated before the proceeding was commenced
- if your tenancy was terminated, that you received proper notice or notices of termination
- that the landlord had grounds to terminate your tenancy under the lease or pursuant to an applicable rent regulation, and
- you were properly served with a notice of petition and petition.



If the property is a multiple dwelling, the landlord will also need to show that the building is properly registered with the New York City Office of Code Enforcement.



If the unit is regulated, the landlord must also show that the apartment is properly registered with the DHCR.

To prove these elements, the landlord's attorney may put witnesses, such as your landlord or manager, on the witness stand and ask them questions about the property's ownership, the rent due under your lease or rental agreement, etc. Unless you understand the rules of evidence, making objections to these questions is probably not a good idea. (You may end up annoying the judge.) Listen carefully to the witnesses' answers. You get the chance to cross-examine each witness by asking follow-up questions

about their testimony. The landlord may also introduce documents, such as a notice to cure, termination notice and affidavits of service. You are entitled to examine these documents for authenticity before they are admitted into evidence. If a document is not an original or a copy certified by a government records officer as true, point this out to the judge.

If the landlord fails to prove any of the elements listed above, you may ask the judge to dismiss the case. Otherwise, it's up to you to prove that you had a legal justification for fighting the eviction.

Keep in mind that the landlord may call you (the tenant) to the stand to authenticate your signature on a document, such as a lease, rental agreement or letter, or to give testimony. A tenant who testifies in her own behalf is also subject to cross-examination by the landlord's attorney.

4. Tenant's Case

You're up next. You must prove that you have one or more legal excuses (the affirmative defenses you listed in your answer) to stay in occupancy of the rental unit. You may put witnesses on the stand and ask them questions—for example, about your conduct, conditions at the building or your apartment. You may also ask the court to accept your photos, correspondence with the landlord, receipts, violations or inspection reports—basically all you've got. See Section 14, above, for advice.

Judges don't expect tenants who represent themselves to follow the strict rules that apply to the introduction of evidence. But you should expect the landlord's attorney to make objections to your questioning of witnesses and to try to persuade the judge to exclude as much of your documentary evidence as possible. The landlord's attorney may also cross-examine any witnesses you bring to court. If you're confused, look to the judge for guidance.

5. Judgment

A judgment is a final resolution of the dispute by the judge. The judge may dismiss the case or grant a possessory judgment in favor of you or the landlord.

The judge may dismiss the case if the landlord has failed to follow a critical technicality (such as to properly serve you with the notice of petition or petition), or if the landlord fails to prove a required

element of the case. That means that the case is thrown out and you can stay in your apartment. If the judge dismisses the case "without prejudice," which is most common, the landlord may begin all over again with a new holdover proceeding against you right away seeking possession of the rental unit. If the case is dismissed "with prejudice," that means that the landlord may not again terminate your tenancy on the same ground asserted in the petition. This happens far less often.

If the landlord has proven that you have no continued right to stay in the rental unit and you have no valid defense, the judge will issue a judgment granting the landlord possession of the rental unit. That means that the court can issue a warrant to a city marshal or county sheriff for your eviction, unless the judge's order contains a "stay" of the issuance of the warrant until some future event. Various types of stays are discussed in the following section.

N. Post-Judgment "Stays"

A stay is a court order that freezes a pending proceeding, keeping it from going any farther. This section describes when a judge may grant a permanent or temporary "stay" of the issuance of a warrant of eviction, keeping the court from issuing an eviction warrant to a city marshal or county sheriff. Also examined are situations that trigger a stay of the execution of the warrant, keeping a marshal or sheriff from carrying out an eviction.



If the landlord can demonstrate that the tenant seeking the stay is "objectionable," the judge can deny it. This covers situations in which the landlord has won an eviction based on a tenant or occupant's use of the rental unit for drug sales or prostitution, for example, or where the landlord can show that the tenant's continued occupancy presents a risk or adversely affects other tenants in the building.

1. New York City Tenants

In New York City, RPAPL 753 provides the rules on stays of holdover proceedings against residential tenants. It provides for a:

- **Ten-day stay of the issuance of the warrant to correct lease a violation.** If your landlord sues

to evict you on the basis that you violated your lease and wins the case, the judge must give you one last chance to avoid eviction by correcting a lease violation within ten days after judgment. If you don't correct the violation within ten days (or go back to court to ask for more time), the court may issue the eviction warrant. This reprieve does not apply to holdovers based on other grounds, such as lease expiration, nuisance or illegal conduct. This stay is automatic; you shouldn't need to ask for it. (RPAPL § 753(4).)

- **Six-month stay of the issuance or execution of the eviction warrant to find substitute housing.** A judge may, but is not required to, delay an eviction for up to six months if you have tried but failed to find a similar rental unit in the same neighborhood and you or your family would suffer extreme hardship if the stay were not granted. (RPAPL § 753(1-3).) To be eligible, you must deposit with the court any unpaid rent owed to the landlord for a period before the judgment, plus use and occupancy rent for the length of the stay. To apply for this relief, go to the court clerk's office and request an "order to show cause" form.

2. Outside New York City

Judges outside New Your City may order post-judgment stays of the issuance or execution of a warrant of eviction upon "such terms as may be just." (CPLR § 2201.) Such stays are far from automatic and are within the discretion of the judge. To obtain a stay the tenant must show severe personal hardship to himself or his family. Mere inconvenience is not enough. Such orders are usually conditioned upon the tenant's deposit of use and occupancy rent with the court during the stay period. To apply for this relief, go to the court clerk's office and request an order to show cause form.

3. Stays Pending Appeals

If you decide to appeal the case, you're entitled to a stay of the issuance of the warrant pending your appeal. You must, however, pay an "undertaking" of monthly use and occupancy rent for period of the stay. (CPLR §§ 2201, 5519(a), par. 6.) An experienced tenant advocate or landlord-tenant lawyer should be

able to evaluate your case and decide whether it is worth appealing, and can prepare the necessary papers to obtain a stay pending appeal.

O. Evictions

Although most landlord-tenant disputes are settled, occasionally, a case will result in eviction. In New York City, eviction procedures are set by the city's Department of Investigation and detailed in the *New York City Marshal's Handbook of Regulations*. Outside New York City, county sheriffs' offices set their own procedures for evictions. This section presents an overview of relevant rules and policies with respect to the Notice of Eviction and calculating the earliest eviction date.

1. The Warrant of Eviction

When a court awards the landlord a possessory judgment against a tenant, the landlord is entitled to a warrant of eviction directing the marshal or sheriff to restore the landlord to possession of the premises. The issuance of the warrant annuls the landlord-tenant relationship. Before "executing the warrant," the legal term for carrying out the eviction, the marshal or sheriff must serve the tenant with a Notice of Eviction. This notice, together with a copy of the warrant of eviction, must be served to you in the same way that a rent demand must be served. (Chapter 15, Section G, describes how.) The actual eviction may occur only "between the hours of sunrise and sunset." (RPAPL § 749(2).)

2. Content of the Notice of Eviction

While the format of a notice of eviction varies from county to county, all include the following information:

- the sheriff or marshal's name, address, telephone number and badge number
- the name and county of the court
- the title of the eviction proceeding, including the index number
- the address of the premises
- a statement in bold type designating the notice as a Notice of Eviction
- the date of the notice, which must be on or after the date the notice is delivered personally

to the tenant or, if served or given by any method that requires a mailing, the date on which it is mailed, and

- a warning that the court has issued a warrant for the tenant's eviction, and a warning to the tenant that if she fails to vacate the described premises by the date in the notice, that the tenant may be evicted.

In New York City, the notice must be printed in English and Spanish and must include instructions as to how the tenant may attempt to stop the eviction, where to go to apply for a stay order (Section N explains stays) and where to go for legal assistance.

3. Calculating the Earliest Eviction Date

State law requires that you get "at least seventy-two hours' notice" of an impending eviction. (RPAPL § 749(2).) The actual time frame can prove to be considerably longer and will depend upon the manner in which the Notice of Eviction was served.

When the Notice of Eviction is personally served, the 72-hour notice period begins the next day and runs for three days excluding Saturdays, Sundays or holidays. If the Notice is taped to your door or handed to someone who lives or works in your apartment, the marshal or sheriff must mail copies of the Notice to you. (RPAPL § 735.) The notice period begins the day after the copies are mailed and runs for five business days, excluding Saturdays, Sundays and holidays. In any case, the earliest eviction date is the sixth business day after the mailing.

A Notice of Eviction doesn't last forever. In New York City, the Department of Investigation requires city marshals to give tenants a new notice if:

- 30 days have elapsed since the earliest eviction date cited in the original notice and the warrant has not been executed, or
- you get a court order postponing the eviction that later expires or is vacated (thrown out).

Sheriffs outside New York City must follow similar requirements, depending on the county. ■



Your Right to End Your Lease

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A lease lasts for a fixed term, typically one year. As a general rule, neither you nor your landlord may unilaterally end the tenancy, unless you have violated the terms of the lease or the landlord has failed to meet a key promise, such as to provide a habitable place to live. Depending on the strength of the rental market, getting out of a lease early can be harder than getting one in the first place. If the market is strong, your landlord will probably be eager to let you out of your lease in order to rent it to someone else for more money. Landlords are usually anxious to take back rent-stabilized apartments, too, since tenants with rent-stabilized leases usually pay below-market rents. But during market downturns, landlords are more apt to hold tenants to their bargain and keep them on the hook for rent until the very last day of their lease.



Skip this chapter if you have a month-to-month tenancy or your apartment is rent-controlled.

Chapter 14 explains how to end a month-to-month tenancy. Rent-controlled tenants may end their tenancy at any time, without prior notice to the landlord.

This chapter looks at four limited—but not uncommon—legal reasons that tenants may use to end their tenancies early without further liability for rent. Section A discusses your right to move out, without prior notice, if your rental unit is destroyed or becomes unsafe or uninhabitable. Section B looks at the right of military tenants to end their lease early. Senior citizens may also terminate their leases under certain circumstances, as discussed in Section C. Finally, in Section D, we offer a sample lease surrender agreement to protect tenants whose landlords have agreed to let them out of their lease or rental agreement. This chapter also includes a discussion (Section E) on assigning your lease, one option if your landlord will not cancel your lease.



Related topics covered in this book include:

- Understanding lease and rental agreement provisions on notice required to end a tenancy: Chapter 2
- How landlords may increase rent and modify other terms of a month-to-month tenancy: Chapter 3
- Conditions that violate the warranty of habitability and justify moving out: Chapter 9

- Landlord harassment as justification for terminating a lease: Chapter 11
- Requesting permission to sublet the lease: Chapter 12
- Notice requirements to end a month-to-month tenancy: Chapter 14
- Handling a three-day notice for nonpayment of rent: Chapter 15
- Dealing with termination notices for fixed-term or rent-regulated tenancy: Chapter 16
- Getting your security deposit back when you leave: Chapter 18.



Model Letters and Sample Forms in This Chapter

- Notice to Landlord Terminating Tenancy for Military Service
- Senior Citizen's Notice to Landlord Terminating Lease
- Lease Surrender Agreement

A. Destroyed, Unsafe or Uninhabitable Rental Unit

A tenant whose home is significantly damaged—either by natural disaster or any other reason beyond his responsibility or control—has the right to consider the lease at an end and to move out. (RPL § 227.) However, if the premises are only partially destroyed, your lease may limit your right to leave. So-called “destruction clauses” often give the landlord the option to either terminate the lease with you, or to restore the premises for your continued occupancy. Of course, tenants are not required to pay rent during any restoration period in which they are out of occupancy. For more information on what to do if your rental unit is destroyed or is significantly damaged by fire or other calamity, see Chapter 9, Section N.

Similarly, a tenant is legally entitled to move out, without giving notice, if the landlord has let conditions in the rental unit deteriorate to such a degree that all or part of the unit has become unsafe or uninhabitable. (RPL § 227.) Called a “constructive eviction,” this doctrine typically applies only when living conditions are intolerable—for example, if you have had no heat for an extended period in the winter.

What constitutes a constructive eviction varies under the circumstances. Generally, if a rental unit has serious habitability problems for anything but a very short time, you may be entitled to move out without giving notice. A defect that is truly minor, such as a squeaky closet door or a chipped tub, does not justify walking away from your lease. We detail the types of conditions that violate the warranty of habitability (the landlord's responsibility to keep rental premises livable, usable and safe) and your legal options in Chapter 9, Section A.

Before you take the extreme step of breaking your lease, however, you'll first need to put your ducks in a row. If your landlord sues you for unpaid rent in small claims court after you move out, you'll need to persuade a judge or arbitrator that conditions in your apartment were indeed unsafe or uninhabitable, and that you gave the landlord notice to this effect and a reasonable time to remedy the problem. Otherwise, you could be on the hook for rent during the balance of your tenancy.

Here are the steps you can take. First, notify the landlord, in writing, about the inhabitable or unsafe conditions, and save a copy of the letter. Chapter 9 provides a model letter for this purpose. Second, give the landlord a reasonable period of time to respond to the problem. The amount of time will depend on the gravity of the circumstances and the complexity of the work required. It may take the landlord a week or so, weather permitting, to properly repair a leaking roof. But if the leak has caused your ceilings to fall, there's no reason to wait around. Finally, document the condition of the apartment before you leave. A clear, date-stamped video or set of photos of the inhabitable or unsafe condition is best. Reports from government agency inspectors are also helpful evidence to corroborate your claim.

B. Termination by Military Tenants

The events of September 11, 2001, have led to the potential call of more than one million reservists into active duty. Tenants entering "military service" may terminate a lease upon written notice to the landlord. The lease will terminate 30 days after the tenant's next rent payment is due. (50 U.S.C. § 501 and following; NY Mil. L. § 310.) Military service means active full-time duty in the United States Army, Navy, Marine Corps, Air Force, Coast Guard, Army National

Guard, Air National Guard, New York Naval Militia and New York Guard. Any landlord or agent who interferes with the removal of your property from the rental unit, after you have properly terminated your tenancy, may be found guilty of a criminal misdemeanor and imprisoned for up to a year, fined up to \$1,000, or both.

You may terminate your tenancy at any time after the date that your active, full-time military service begins. To properly terminate the lease, you must prepare a written notice to the landlord, stating that you have elected to terminate your tenancy under Military Law Section 310. The statute permits this notice to be personally delivered or sent to the landlord via regular mail. Also include an address where you would like your security deposit refund sent.



While not required under the statute, it's a good idea to attach proof of your military status to the termination notice, such as a copy of your military ID card, your induction papers, or the order or telegram calling you to active duty. That way, your landlord won't be tempted to give you a hard time or challenge your notice in court.

A sample notice terminating your tenancy because of military service appears below.

If you pay rent monthly under a lease, the termination is effective 30 days after the first date on which the next rental payment is due after delivery or mailing of the notice. For all other tenancies, termination is effective on the last day of the month following the month in which such notice is delivered or mailed.

EXAMPLE: Upset by the World Trade Center attacks, Pedro decides to join the Marines. After receiving induction papers, Pedro sends his landlord a notice that he is terminating his lease to enter military service. Pedro mails the letter on April 12. His next rental payment is due May 1. The lease terminates May 31—30 days later.

EXAMPLE: On June 29, Georgette, an Air Force reservist, receives orders to report to McGuire Air Force Base the following month. On June 30, Georgette mails a letter to her landlord terminating her lease to enter military service. Georgette's next rent payment is due July 1. The lease terminates July 31—30 days later.

Upon termination, you are released from further rent liability. Your landlord must refund any advance rent you paid for a period after the termination date.

Notice to Landlord Terminating Tenancy for Military Service

July 27, 200x

Rosa Malave
Park Place Realty Associates
11 Park Place
New York, NY 10007

Re: Apt. 8-K, 3 Hanover Square, New York, NY 10004

Dear Ms. Malave,

Please take notice that under NY Military Law Section 310, I have elected to terminate my lease for the above-referenced apartment. As you know, I am a Reservist in the U.S. Army. I have recently received orders calling me back active, full-time duty. A copy of my military order is attached.

Enclosed is my rent check for the month of August, 200x. I will be moving out on or before August 31, 200x, the effective date for my termination. Kindly send a check for my security deposit to me, in care of my mother, Mary M. O'Connor, at 85-81 112th Street, Richmond Hill, New York 11418. Thank you for your kind attention to this matter.

Sincerely,

Brian F.X. O'Connor

Brian F.X. O'Connor

1. Eligible Tenants

A tenant who is 62 or older, or who will turn 62 during the lease term, is eligible to terminate the lease. So are spouses of tenants who are 62 or who will turn 62 during the lease term.

EXAMPLE: Millie, 58, is the tenant of a Bronx apartment. She shares the unit with her second husband Herbert, who is 64. Millie is eligible for protection under the statute.

2. What Relocations Trigger a Right to Terminate?

Depending on their destination, eligible tenants may be able to terminate their leases early, without any further rent liability. Here are the two types of relocations that qualify.

a. Moving in With a Family Member for Medical Reasons

For tenants with medical conditions, living alone or dealing with stairs, for instance, can make daily personal activities difficult. At times like this, moving in with a son, daughter or other relative can make life a lot easier. Fortunately, eligible tenants may terminate their leases to move to a family member's home, if they can satisfy two requirements.

First, you or your spouse must be certified by a physician as no longer being able to live independently in the rental unit, because you need help with basic daily activities, such as cooking, bathing or dressing. A letter from your doctor (on his or her letterhead) will suffice. The second requirement is a notarized statement from a family member stating that you (or your spouse) are a relative and that you will be moving into the family member's home for at least six months or pending admission to one of the facilities listed in Subsection b, below. "Notarized" means that the family member must sign the statement before a licensed notary public. Look in the Yellow Pages to find a nearby notary.

Your doctor's certification and notarized family statement must be attached to your termination notice.

C. Termination by Tenant Senior Citizens

New York Real Property Law § 227-a permits eligible senior citizens to terminate their leases in order to move in with a relative or relocate to certain types of housing. Here are the rules.

b. Moving to a Specified Facility

The statute also permits eligible tenants to terminate their leases if they are moving to one of the following specified facilities:

- an adult care facility
- a residential healthcare facility
- a public or privately subsidized housing unit, or
- a less expensive unit in a housing project or complex for senior citizens.

If you are not sure whether a certain facility qualifies, ask the facility's owner or landlord.

The law requires owners and landlords of the facilities described above to know and understand this law.

3. Procedure for Termination

To terminate your lease, you must prepare a letter notifying your landlord that you wish to terminate your lease under Real Property Law Section 227-a. A sample letter appears below. The notice may be delivered personally or by mail. If you hand-deliver the notice to the landlord, the termination is deemed effective thirty days after the date your next rental payment is due. If you mail it, the termination is effective 35 days after your next rent payment due date.

EXAMPLE: On September 5th, Stanley mails a letter to his landlord Gustavo notifying him that he is moving into an adult care facility. The letter is deemed effective September 10—five days after it is mailed. Stanley's next rent payment is due October 1, so Stanley's termination is effective October 31—30 days later. If Stanley moves out on or before October 31, he is released from any further rent liability under the lease.

If you are moving in with a relative, your notice must be accompanied by a physician's certification and a notarized statement from a family member, as explained in Subsection a, above.

If you are moving to one of the facilities described in Subsection b, above, you will need to document your admission or pending admission with a copy of an executed lease or contract between you and the facility.

Notice to Landlord Terminating Tenancy in Order to Live With Relative

June 15, 200x

Peter Ashendorf
Riverside Realty
276 Riverside Drive
New York, NY 10025

Re: Apt. 3-E, 18 Arlington Place, Brooklyn, NY 11216

Dear Mr. Ashendorf,

Please take notice that under New York Real Property Law Section 227-a, I have elected to terminate my lease for the above-referenced apartment. I am 63 and have a medical condition which has left me unable to live independently in this apartment and I need help with daily personal living activities. I am relocating to my daughter's home.

Enclosed please find a letter from my physician certifying that, due to a medical condition, I am no longer able to live independently in my apartment and that I require assistance with personal living activities. Also enclosed is a notarized statement from my daughter stating that we are related and that I will be relocating to her home for at least six months.

My next rent payment is due on August 1. I will be moving out on August 31, 200x, the effective date of my termination. Kindly forward my security deposit refund to me in care of my daughter, Jennifer Anderson, 223 Spring Hollow Drive, Allenwood, NJ 08720. Thank you for your kind attention to this matter.

Very truly yours.

Lily B. Anderson

Lily B. Anderson

4. Penalties for Landlord Interference

Anyone who knowingly takes or holds personal effects, clothing, furniture or other property after you have lawfully terminated your lease under RPL § 227-a, or in any manner interferes with your move-

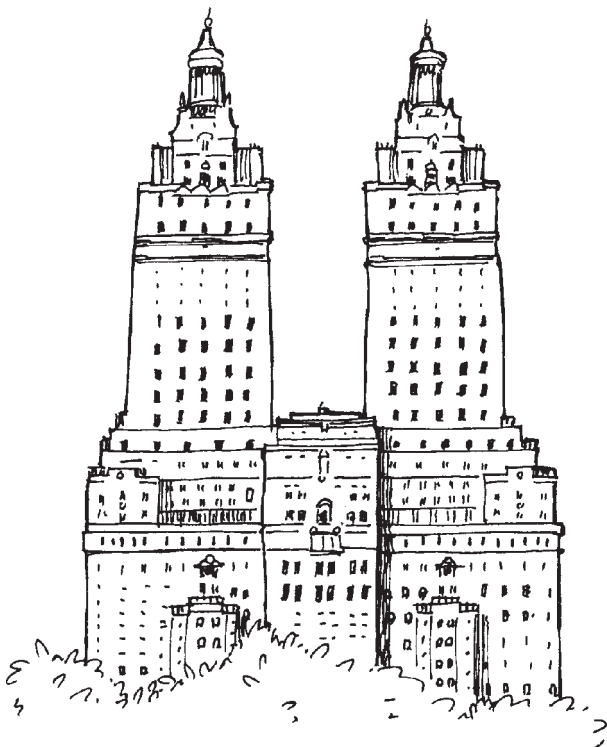
out, is guilty of a misdemeanor and may be punished by imprisonment or a fine, or both.

D. When You Volunteer to Leave

Sometimes, you may wish to break the lease and move out early—for example, if you've found a better place to live or a new job requires your relocation. In many situations, your landlord will consent to your leaving early. For example, if your unit is rent-stabilized, a vacancy will entitle the landlord to a hefty rent increase. (Chapter 4 explains how rent-stabilized rents may be increased upon a vacancy.) And even if the unit isn't regulated, the landlord may be able to get more rent from a new tenant than you've been paying under your lease.



It's always easier to get out of your lease if you can introduce the landlord to a credit-worthy person who is eager to rent the apartment as soon as you move out.



If your landlord agrees to let you out of your lease or rental agreement, great! But don't just drop off the keys and wave goodbye. Ask the landlord to sign a Lease Surrender Agreement (a sample is shown below), which releases you from the obligation to pay rent after you vacate. The Agreement should also address the return of your security deposit.

Lease Surrender Agreement

Max Morganstern (Landlord) and Grace Park (Tenant) agree as follows:

1. Tenant hereby surrenders all right, title and interest in his/her tenancy of the premises known as and located at Apartment 3B, 271 Park Avenue, New York, NY 10017 (Premises), effective October 31, 200x.
2. Landlord and Tenant agree that the Lease for the Premises entered into on January 1, 200x will terminate on October 31, 200x.
3. Tenant agrees to vacate the Premises on or before October 31, 200x, and to remove all his/her personal property and possession from the Premises on or before that date.
4. Landlord agrees to return tenant's security deposit, in the sum of \$2,100, on or before November 15, 200x, by mail addressed to the tenant at 201 Chestnut Street, Apt. 10B, New York, NY 10101.
5. Upon tenant's surrender of possession, tenant shall be released from all obligations arising under the lease, including the obligation to pay rent.

Dated: October 3, 200x

Landlord: Max Morganstern
Max Morganstern

Tenant: Grace Park
Grace Park

If your landlord won't let you leave early, but you move out anyway, you stay on the hook for monthly rent until your unit is rented to a new tenant. When the lease ends, the landlord may apply your security deposit to unpaid rent and sue you for the balance. Chapter 18, Section E2, has more on a landlord's duty to re-rent the premises (known as the duty to "mitigate" damages).

E. Assigning Your Lease

If you intend to leave permanently, but your landlord will not cancel the lease, consider the option of assigning your lease.

An assignment is a transfer of all of your remaining lease rights and obligations, including the right to occupy the rental unit, to another person, known as an assignee. When a lease is assigned, the assignee steps into your shoes and is bound to all of the terms of the lease. You (the assignor) lose the right to return and reoccupy the rental unit.

Unless a greater right is provided under your lease, New York law prohibits tenants from assigning their lease without their landlord's prior written consent. (RPL § 226-b (a).) But the law gives you a loophole. If the landlord unreasonably refuses to consent to your request to assign the lease, the landlord must release you from the lease upon 30 days' notice.

Unlike sublets (discussed in Chapter 12), your landlord *may* withhold her consent to your request to assign for no reason or any reason. (RPL § 226-b.) This means that your landlord can just say "no." She needn't state her reasons for rejecting the assignment.

Remember though that if your landlord just says no, she must release you from the lease upon 30 days' notice. But if the landlord reasonably withholds consent, that is, says no for a good reason, the lease may not be assigned and you may not be released from the lease. As with sublets, if the landlord unreasonably says no and refuses to release you from the lease, you can take legal action. In such cases, the landlord would have to prove to a judge that his reasons were legitimate and well founded.

Assignment doesn't, however, completely sever the legal relationship between you and your landlord. Oddly enough, you remain responsible for the rent if the assignee fails to pay. Absent an agreement to the contrary, however, you are not liable for damage to the premises caused by the assignee. Generally, the landlord and assignee are bound by promises made in the lease signed by the original tenant. For example, the lease provision in which the landlord agreed to return the security deposit in a certain manner is still in effect, but it now benefits the assignee.

Typically, to accomplish an assignment the landlord and the tenant write "Assigned to John Doe" on the lease at each place where the tenant's name appears. The new occupant, John Doe, then signs at each place where the original tenant signed. If this is all that's done, you remain liable for the rent, but not for damage to the property.



Beware of extra agreements. Carefully review any "Consent to Assignment of Lease" documents or other agreements your landlord asks you to sign in connection with an assignment. They can obligate you to cover damages to the property beyond normal wear and tear if the assignee refuses or is unable to do so. ■



Getting Your Security Deposit Back and Other Move-Out Issues

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7enants who plan to move out are understandably anxious to get their full security deposit back from the landlord. Most New Yorkers need the money to rent or buy a new place. So, it can be a big problem if your landlord refuses to apply the security deposit to your last month's rent, or uses it to pay for alleged repairs, cleaning bills or past due rent.

Fortunately, with some advance planning you can minimize deductions from your security deposit. First, it will help a lot if you've followed our advice in Chapter 6 by documenting the condition of the rental unit when you moved in. We explain here why it's also wise to follow the same inspection procedure at move-out time. That way, you can agree in advance with your landlord what conditions, if any, need to be taken care of before you leave.

This chapter explains how soon your landlord must refund your security deposit to you and describes what deductions are legal for repairs, cleaning and unpaid rent. We also lay out your options for dealing with problems regarding the amount or type of deductions; these include filing a complaint with the New York State Attorney General's office (which investigates security deposit disputes) or, as a last resort, filing a small claims court action to recover your money.



Related topics covered in this book include:

- Lease and rental agreement provisions on security deposits, abandoned property and other issues relevant to moving out: Chapter 2
- Rent increases for rent-regulated apartments that affect your security deposit: Chapter 4
- Legal requirements that limit the size of your security deposit, how deposits must be handled and when you're entitled to interest: Chapter 5
- Taking photographs and using an Apartment Inspection Checklist to keep track of the condition of the premises before and after you move in: Chapter 6
- Tenant's obligation to repair and restore the premises to its original condition before moving out: Chapter 9
- How to properly end a month-to-month tenancy: Chapter 14.



Model Letters and Sample Forms in This Chapter

- Letter Demanding Return of Security Deposit
- Attorney General's Rent Security Complaint Form

A. Can You Use Your Security Deposit for Last Month's Rent?

When giving notice, many tenants ask the landlord to apply their security deposit toward their last month's rent. (Chapter 5 discusses last month's rent and deposits.) If your landlord agrees to use your deposit for rent—great! You're way ahead of the game. But unless a portion of your deposit was specifically labeled "last month's rent," the landlord is not legally obliged to apply it in this way—meaning that the landlord may legally refuse.

Why should she object? The landlord will probably claim that she can't know in advance what condition the property will be in when you move out. If your full security deposit is applied to your last month's rent and you move out leaving the apartment a mess, the landlord won't have any funds on hand to make repairs or clean the apartment.

You have a few options if you are faced with a landlord who legally refuses to use your deposit for last month's rent. The first is to ask the landlord to make a quick inspection and see for himself that you've kept the property clean and undamaged. (Section B, below, discusses inspections.) If the rental unit is in good condition, this approach will sometimes work, and the landlord will agree to apply your deposit to the last month's rent. However, some landlords will refuse to hand over your security deposit before you move out, even if your rental unit looks better now than it did when you moved in.

Another option is to simply not pay your last month's rent. Hopefully, the landlord will apply your security deposit to the last month's rent and not come after you for any alleged property damage. But don't expect your landlord to give you a stellar reference if you do this, particularly if you left your place in less than perfect condition. And, unfortunately, the consequences could be much worse. Your landlord could treat your nonpayment of the last month's rent as an ordinary case of rent nonpayment. This means that you could get served with a three-day rent

demand (covered in Chapter 15), and if you don't pay or leave in the time provided, the landlord could start an eviction proceeding against you.

Because it typically takes several weeks (or more) for a landlord to legally evict a tenant, you'll probably move out before the marshal or sheriff arrives with an eviction warrant. However, the landlord might still be able to secure a money judgment against you for the unpaid last month's rent (in addition to any late fees and attorney fees authorized under your lease or rental agreement). With the judgment, the landlord may use your security deposit first to pay for any damage to the rental unit and apply any remainder to the judgment for nonpayment of rent. Another consequence is that the money judgment could show up on your credit report, making it harder to rent an apartment or qualify for other forms of credit in the future.

B. Move-Out Inspections and Procedures

Most security deposit hassles between landlords and tenants are not about major repair and replacement costs. They concern minor problems—like whether the mini-blinds, now broken, ever worked in the first place. Or whether there were one or two cooking racks inside the oven when you moved in. If you documented the condition and contents of the rental unit when you moved in (as we recommended in Chapter 6), you should be able to avoid disputes like this when you move out.

1. Ask for Move-Out Instructions

Many professional landlords and managers give written move-out instructions to tenants, which cover specific cleaning requirements, how best to perform minor repairs, such as fixing holes left from picture hooks and how and when the final inspection may be conducted. Before you move out, ask your landlord or manager if she has any move-out instructions or specific recommendations for your rental. Following the landlord's guidelines and procedures (assuming they are reasonable) can reduce the likelihood of disputes over the return of your security deposit.

Tenant move-outs tie up elevators and obstruct public halls and lobbies. If you live in a large building, your landlord may have rules on what time of day

you may move out so as to minimize inconvenience to other tenants. Move-outs also pose the risk of damage to a building's common areas. By coordinating a date and time for your move out with the landlord, your landlord can take precautions like protecting the floor and walls in the building's common areas, installing pads to protect passenger elevator walls or making service elevators and exits of the building available to your movers.

2. Clean Thoroughly

You can't expect to get your deposit back if you've left the place a mess. Most leases require you to leave the premises in "broom-clean" condition. That means that you should clean the place thoroughly, especially the kitchen and bathroom. Remove all of your belongings before you leave—including bags of garbage, clothes, food, newspapers, furniture, dishes or other items. Leaving things causes extra work for your landlord, which you may end up paying for from your deposit.

3. Request an Inspection Before You Leave

Even if there are no written move-out instructions, it's a good idea to ask your landlord to inspect your unit in your presence, to assess its condition. Do this after you've moved your belongings and before turning in the keys. If you don't ask for a joint inspection, most landlords will conduct a final inspection on their own after you've left. Then, the landlord will deduct money from your security deposit to pay for any damage noted during the inspection. By arranging to be present for the inspection, you can discuss any possible deductions before they are taken and, if appropriate, reach a compromise on the spot.

Be sure to bring to the final inspection any documentation you have as to the condition of the rental at move-in, such as an Apartment Inspection Checklist (discussed in Chapter 6 of this book) if one was prepared, or any photos you took. That way, if the landlord points out a problem (such as a tub chip) that you know was there when you moved in, you can show photos or a move-in inspection report that indicated the damage existed when you took occupancy. If the inspection reveals the need for a repair that's due to your negligence, such as fixing a broken closet door, it's better to deal with this before you move out. You can either agree to fix the problem

before you leave or negotiate a reasonable security deposit deduction in advance. This approach avoids the risk that you'll be unpleasantly surprised by the amount the landlord withholds from the deposit.

If your landlord refuses to inspect the apartment with you, have the unit examined by another person, such as the building super, another tenant in the same building, your mover or a friend. Make sure this person will be available to testify in court on your behalf, if necessary, should you end up in small claims court. If you are using an Apartment Inspection Checklist like the one described in Chapter 6 of this book, note any items that need cleaning, repair or replacement in the middle column, and have your witness sign and date the checklist. Also, be sure to keep all of your receipts for cleaning, such as rental of a carpet cleaning machine, in case you later need to sue your landlord in small claims court for return of your deposit. Section F3, below, lists evidence that can help your case in court.



Photograph “before” and “after” conditions. In Chapter 6, we recommend that you photograph or videotape the unit when you move in. You should do the same when you leave, so that you can make comparisons and have visual proof in case you need to sue the landlord for the return of your security deposit in court.

C. How Soon to Expect Your Deposit Back

There aren't any New York statutes that require landlords to return tenant security deposits within a specific time period. Courts give landlords a “reasonable time” after you leave to return the deposit, adjusted for any deductions. Your landlord can deduct from your deposit whatever amount is needed to fix damaged property (outside of ordinary wear and tear) or to make up unpaid rent.

What's a reasonable time for the landlord to return your deposit? First, check your lease or rental agreement to see if it spells out a time limit for the return of your security deposit. If it does, your landlord is contractually obligated to comply with that deadline. For instance, many New York City rent-stabilized tenants have leases that give the landlord 60 days to return the security deposit, either in whole or in part, after deductions have been made.

If your lease or rental agreement doesn't set any specific deadline, 30 days will almost always be considered a reasonable time to return deposits, although depending on the circumstances, 60 days could also be reasonable. For example, if you left the property damaged and filthy, the landlord could need more than 30 days to fully assess repair and cleanup costs. To protect yourself, try to negotiate a deadline in your lease or rental agreement for the return of your security deposit.



Don't forget to give your forwarding address to the landlord.

Many tenants move out without giving their landlords a new address. When this happens, landlords mail the refund to the old address, and the post office will forward the mail to your new address (assuming you've left forwarding instructions with the post office). By giving the landlord a forwarding address, you'll speed up the return of your security deposit. If you're wary of telling your landlord where you'll be living, provide your office address or a post office box instead.

D. Deductions for Repairs, Replacements and Cleaning

As you can imagine, many disputes over security deposits revolve around whether or not it was reasonable for the landlord to deduct the cost of repairing the premises after the tenant moved. Unfortunately, standards in this area are vague.

If you're lucky, you'll get a check for a full refund of your security deposit a month or two after you've moved out. But often, you'll get a check for less than your full deposit, leaving you guessing about where the rest of your money went. New York landlords are not legally required to furnish a written itemized statement detailing how they've applied the deposit. But most will supply that information over the phone if you ask for it. Here are some general rules on what deductions are kosher.

1. Reasonable Deductions

Typically, the landlord may charge for any damage caused by the tenant or for repairs or replacements necessary to restore the rental unit to its condition at the beginning at the tenancy. The landlord may not deduct for the results of ordinary wear and tear.

a. Repairs or Damage

In general, your landlord may deduct for any necessary repairs caused by your neglect or abuse (or that of your roommates or guests). Examples include fixing holes in walls, re-hanging interior doors torn from their hinges, replacing broken medicine cabinet mirrors or fixing chipped sinks and tubs. The landlord may also deduct for such things as exterminating flea infestations left behind by a tenant's pet or cleaning tobacco smoke residue from the surfaces of the rental unit. (*McCormick v. Moran*, NYLJ, 11/24/99, p. 35, col. 3 (Watertown City Ct).)

The landlord may also deduct the cost of replacing any items that were furnished to the rental unit when you moved in but are now missing. Items that are commonly missing from a rental unit at move out include appliance accessories (such as ice cube trays, butter dishes, racks and broiler trays), medicine cabinet or closet shelves, smoke detectors and fire extinguishers.

The landlord can't deduct for repairs that are due to normal wear and tear, such as fixing an ailing appliance, re-polishing wood floors or replacing fallen plaster. (See Subsection b, below.)

b. Normal Wear and Tear

There are no hard and fast rules on what constitutes wear and tear; nor is there a clear definition of the type of deterioration that is your responsibility. We can, however, offer you some guidelines:

- You shouldn't be charged for filth or damage that was present when you moved in, such as dirty mini-blinds or nail holes in the wall.
- You shouldn't be charged for replacing an item when a repair would be sufficient. For example, a tenant who damaged the kitchen counter by placing a hot pan on it shouldn't be charged for replacing the entire counter if an expertly done patch will do the job.
- The longer you lived in a place, the more wear and tear can be expected. In practical terms, this means that your landlord can't always charge you for cleaning carpets, drapes or walls or for repainting.

c. Cleaning

Security deposit deductions for cleaning costs are not always clear-cut. Generally, New York tenants are expected to return their units in "broom-clean"

condition, unless a stricter cleaning standard is spelled out in the tenant's lease. (See, for instance, *Fernandez v. Chapman*, NYLJ, 12/30/98, p. 27, col. 4 (Mt. Vernon Just. Ct.).) A landlord may deduct for extraordinary cleaning charges, such as cleaning (or replacing) pet-stained carpets or removing large amounts of debris and garbage left by the tenant. But taking deductions for routine cleaning of dirty stoves, refrigerators, bathroom fixtures or mildew in the bathroom is questionable. If you fight a deduction for basic cleaning charges in small claims court or before a mediator, you might win.

2. Common Disagreements Regarding Deductions

Common areas of disagreement between landlords and tenants concern painting, carpeting and fixture removal.

a. Painting

Can the landlord always deduct the cost of new paint job from your security deposit? It depends. If the paint damage was caused by a building leak or the landlord's repair work, you shouldn't be charged for re-painting. But if your abuse or neglect caused the paint damage, the landlord might be able to charge you for part of the re-painting cost. It depends on how long you occupied the unit since the last paint job and how frequently the landlord is required to paint under your local housing maintenance code. Faded paint is always due to normal wear and tear—and should never affect your security deposit.



New York City landlords must repaint rental units every three years. (NYC Admin. Code

§ 27-2013.) If you lived in a NYC unit for at least three years since the last paint job, the landlord can't deduct any of the cost to repaint from your security deposit. It was time for the landlord to re-paint the unit anyway. But if you lived in the unit for less than three years, a court mediator might find that your landlord was right to charge you for a pro-rata portion of the re-painting costs, if the damage to the paint job exceeded normal wear and tear.

EXAMPLE: Andrea's New York City studio apartment was freshly painted when she moved in. After her one-year lease expired, she moved out.

Bob, Andrea's landlord, inspects the unit and notes that all four walls of the unit are completely scraped, scuffed and dirty—far beyond anyone's definition of normal wear and tear. Bob pays his building superintendent \$300 to re-paint the unit. Bob may reasonably deduct \$200 (two-thirds of \$300) from Andrea's security deposit.

b. Rugs and Carpets

If the living room rug was already threadbare when you moved in a few months ago and looks even worse now, it's pretty obvious that your footsteps have simply contributed to the inevitable, and that this wear and tear is not your responsibility. On the other hand, a brand-new good quality rug that becomes stained within months has probably been subjected to the type of abuse you will have to pay for. In between, it's anyone's guess. But clearly the longer you've lived in a unit, and the cheaper or older the carpet was when you moved in, the less likely it is that you should be held responsible for its deterioration.

c. "Fixture" Removal

A fixture is any piece of personal property that you screw into or otherwise affix to the walls, floors or ceilings of your rental unit, such as bookcases, shelves, sconces, or mirrors. Most leases and rental agreements require tenants to remove their fixtures at move-out and to restore the walls, floors or ceilings to their original condition. This is a good rule to follow even if you don't have a lease or rental agreement, or it doesn't address this issue.

If you don't remove your fixtures (or other personal property), the landlord may consider it "abandoned." That means that the landlord can choose to keep it or throw it out. (Your lease or rental agreement may authorize your landlord to elect to store any personal property you leave behind at your expense, as explained in Chapter 2.) Either way, any damage caused by the removal of fixtures you installed is your responsibility.

E. Deductions for Unpaid Rent

Your landlord can deduct any unpaid rent from your security deposit, including any unpaid late fees, utility charges or other financial obligations authorized by

the lease or rental agreement. Holdover rent (also known as "use and occupancy") may also be deducted for each extra day that you stay on after the tenancy ends. How much rent may be deducted depends on the circumstances of your departure and whether you were renting under a month-to-month rental agreement or a fixed-term lease. If the deposit doesn't cover the unpaid rent, the landlord may sue you in small claims court for the balance.

1. Month-to-Month Tenancies

If you rent on a month-to-month basis, here are various scenarios that would allow the landlord to deduct rent from your security deposit.

a. You Leave Owing Rent

If you've been behind on the rent for months, the landlord is entitled to deduct what is owed from the security deposit when you leave. If the security deposit does not cover the entire amount owed, the landlord may sue you in small claims court.

b. You Stay After the Announced Departure Date

If you fail to leave when planned (or when requested, if your rental agreement has been terminated), you're obviously not entitled to stay on rent-free. The landlord can charge you "holdover rent," which is usually calculated by prorating the monthly rent for the number of days you stayed on.

EXAMPLE: Erin gives notice on March 1 of her intent to move out on March 31. She pays \$1,200 for March rent. But because she can't get into her new place on time, Erin stays until April 5 without paying anything more for the extra five days. The landlord is entitled to deduct 5/30 (one-sixth) of the total month's rent, or \$200, from Erin's security deposit.

c. You Give Inadequate Notice

If you leave without giving the legally required amount of notice, the landlord is entitled to rent money for the balance of the notice period, as if you had given full notice, unless the place is re-rented within the notice period. Chapter 14, Section A, explains the basic rules on giving notice to end a month-to-month tenancy.

EXAMPLE: Tom's written rental agreement provides that he must give 30 days' notice of his intent to move out. Tom moves out on the fifth day of the month, without giving the landlord any notice or paying any rent for the month. The rental market is flooded and the landlord is unable to re-rent the property for two months. The landlord is entitled to deduct an entire month's rent (for the missing 30 days' notice) plus one-sixth of one month (for the five holdover days for which Tom failed to pay rent).

2. Fixed-Term Leases

A lease obligates you to pay rent for a set period of time, such as one year. If you leave before a fixed-term lease expires, the landlord is usually entitled to the balance of the rent due under the lease, less any rent the landlord gets from new tenants, or could have gotten if she had made a diligent effort to re-rent the property. If you have a legal justification for breaking the lease, however, you won't have the same financial obligation.

a. If You Have a Legal Reason to Move Out

If you are legally justified in breaking the lease, the landlord may not recover the balance of rent due under the lease. It is as though the lease expired. Leaving early to enter military service or move into a nursing home are valid reasons, as is moving out because of defective conditions in the rental unit. For details on situations when you may legally move out before a lease ends, see Chapter 17.

b. Landlord's Duty to Re-Rent If You Leave Early

If you move out a month or more before the lease ends but don't have a legal reason or justification to do so, are you responsible for paying rent until the lease runs out? It depends. Before a landlord may collect rent from someone who has moved out, many judges require the landlord to first show that he made "diligent efforts" to re-rent the property reasonably quickly and to keep your liability for the balance of the rent to a minimum. (*Paragon Industries v. Williams*, 122 Misc.2d 628, 473 N.Y.S.2d 93 (App. Term, 2d Dep't, 1983).) In legalese, this is known as the landlord's duty to mitigate damages.

If you leave within a month of the date the lease is scheduled to end, you can be almost positive that

your landlord will make you responsible for the rent through the end of the lease. If such a dispute were to end up in court, a judge will conclude that you owe rent for the entire month. It would be unreasonable to expect the landlord to immediately find a new tenant to take over for the last few days left on your lease. But when a tenant leaves more than 30 days before the end of a lease, the landlord's efforts to look for a new tenant will be more closely scrutinized by a judge.

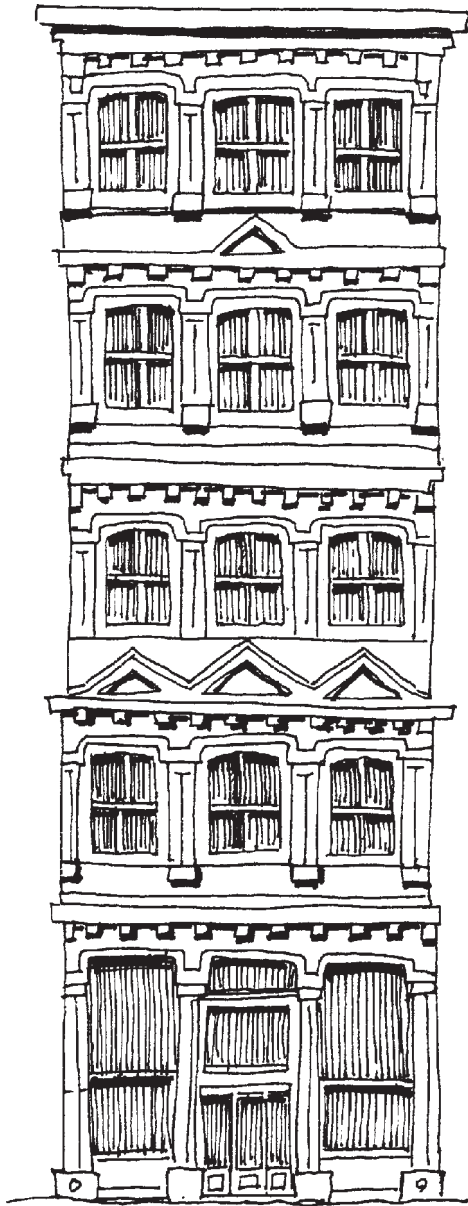
Rulings from New York courts are inconsistent as to a residential landlord's duty to mitigate damages in these situations. In 1995, New York's top court made it clear that in a commercial lease, the landlord has *no* duty to mitigate damages where the tenant has abandoned the premises. (*Holy Properties, Ltd. v. Kenneth Cole Productions, Inc.*, 87 N.Y.2d 130, 637 N.Y.S.2d 964 (1995).) A commercial landlord may refuse to re-rent the premises and sit idly by while unpaid rent piles up during the remainder of the lease. Since 1995, courts in Manhattan and Westchester have applied this rule to residential landlords too. (See, e.g., *Whitehouse Estates, Inc. v. Post*, 662 N.Y.S.2d 982 (App. Term, 1st Dep't, 1997).) Courts in other parts of New York City continue to make a distinction between commercial and residential tenancies and require residential landlords to take steps to re-rent apartments that tenants vacate early.

If you are sued for unpaid rent after you move out, and you had no legal justification for leaving early, you may still make the claim that the landlord failed to take "reasonable steps" to minimize the loss of rental income. (See *Wallis v. Falken-Smith*, 136 A.D.2d 506, 523 N.Y.S.2d 827 (1st Dep't, 1988).) Reasonable steps include advertising the unit in newspapers or on the Internet, listing the unit with real estate brokers, posting "for rent" signs at the property or making other personal efforts to find a new tenant. Keep in mind, though, that the judge hearing the case may not agree that the landlord has any duty to mitigate damages, meaning that you're responsible for paying rent during the balance of the lease term.

3. Deposits in Eviction Cases

If you are evicted, the court will issue a court order awarding possession of the rental unit to your landlord, and a money judgment, ordering you to pay your rent through the date of the judgment. Armed

with these court orders, your landlord can subtract from the security deposit any sums covered by the judgment, as well as any damage repair costs. Any security deposit left over must be refunded to you within a reasonable period of time after you vacate the rental unit. Section C, above, discusses how much time is reasonable.



F. Handling Security Deposit Disputes

What should you do if your landlord doesn't return your security deposit within a reasonable time, or if she deducts too much from your security deposit? Here is a three-step plan of action. The first step is to write a firm letter to your landlord demanding return of your deposit (a sample is shown below). If that doesn't work, you can proceed to the second step—using the Office of the State Attorney General (AG). If all else fails, you can sue your landlord in small claims court.

1. Step One: Make a Written Demand for the Return of Your Deposit

A firm letter is in order if your landlord is slow in returning your deposit or has deducted too much for rent or repairs. A clearly written demand tells your landlord that you mean business and can trigger a quick resolution of the matter.

The tone of your cover letter should be polite, yet firm. Ask for exactly what you want and be sure to set a deadline. To give your letter teeth, conclude by stating that you intend to pursue all of your legal remedies if you don't reach an understanding by the deadline. Here are the specific points your letter should cover:

- the full address of the rental premises
- the exact amount of your security deposit
- the amount of the security deposit you claim to be due, if less than the full amount you deposited
- the lease or rental agreement deadline for the return of your security deposit or, where no specific deadline was agreed to, a statement that "you have failed to refund the security deposit within a reasonable period of time," and
- a demand for payment of the amount due by a specific date.

Hopefully, your demand letter will prompt your landlord to send you a check. But if you can't work something out directly with your landlord, you can use a copy of your demand letter as the basis for a complaint with the New York State Attorney General's office (see Section 2, below). A demand letter also acts as the first step in filing a small claims court action against your landlord (see Section 3, below).

Letter Demanding Return of Security Deposit

May 15, 200x

Debbie Liebschultz
Property Manager
Aztec Realty LLC
225 East 47th Street
New York, NY 10017

Dear Ms. Leibshultz:

As you know, until March 31, 200x, I rented Apartment 2-A at 128 East 35th Street, New York, NY. My lease expired on March 31, and I moved owing no rent. I left the apartment in broom-clean condition. The unit was not damaged in any way.

As of this date, I have not received my \$1,850 security deposit, the interest which has accrued thereon, nor any accounting from you of that money. According to my lease, I was entitled to receive my deposit, including interest and an itemized deduction of any deductions, within 30 days after my tenancy ended—that is, by April 30, 200x. You are now over two weeks late.

Demand is hereby made that this money be paid. Unless payment in the amount of \$1,850, plus interest, is received by June 1, 200x, I shall have no alternative but to enforce my legal rights by filing a complaint with the Office of the New York State Attorney General's office and/or filing a lawsuit against you in court.

I look forward to receiving my full security deposit, including interest, by June 1st at the address that appears under my signature.

Yours truly,

Paul B. Hopkins

Paul B. Hopkins
130 East 77th St., Apt. 7B
New York, NY 10121

2. Step Two: File a Complaint With the Attorney General's Office

The New York State Attorney General's Office (AG) investigates tenant complaints about security deposits, including claims that the deposit was not returned, did not earn interest or was not placed in a trust account. The AG has a special Rent Security Complaint Form (see below) for this purpose. When a tenant files a complaint, the AG forwards a copy to the landlord with a request to respond to your claim.

If your landlord is taking too long to refund your security deposit, filing a complaint with the AG's office often spurs the landlord into sending a check for the full amount. Or, if the landlord thought that he could get away with taking too much of your deposit or without paying required interest, the AG's involvement might trigger a check for the balance of what you are owed.

The AG has jurisdiction to prosecute claims that your landlord has failed to place your security deposit in a trust account, or pay interest when required by statute (as explained in Chapter 5). However, the AG isn't authorized to prosecute landlords who take too long to refund security deposits or withhold too much money. So if your landlord responds to the AG complaint with a statement itemizing deductions for unpaid rent or tenant-caused damage to the rental unit, this will generally be sufficient to conclude the AG's investigation. If you dispute any of the facts in the landlord's statement, like an alleged broken window or a cigarette burn in the Formica counter, you'll need to file a small claims court action (see Section 3, below). Similarly, if the landlord doesn't respond to your complaint, or if the response doesn't address the issue, the AG will urge you to file a small claims court action against the landlord.

You can get a Rent Security Complaint Form by contacting the AG's office or downloading the form from its website (contact information below). A sample Rent Security Complaint Form appears below. Each co-tenant should submit a separate complaint form. Attach to the form a copy of your written lease or rental agreement and/or security deposit receipt, together with any correspondence with the landlord.



ATTORNEY GENERAL ELIOT SPITZER
STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
 BUREAU OF CONSUMER FRAUDS AND PROTECTION
 120 Broadway, 3rd Floor
 New York, NY 10271-0332
 TEL: (212) 416-8345 FAX: (212) 416-8362

**RENT SECURITY
 COMPLAINT FORM**

Consumer Hotline For Hearing Impaired
 (800) 771-7755 TDD (800) 788-9898
<http://www.oag.state.ny.us>

The Attorney General investigates complaints that a landlord has failed to place security deposits in trust accounts or to pay interest on rent security deposits. We also try to assist tenants who complain that a landlord failed to return the rent security when the tenant moved out. If, however, the landlord refuses to return your security deposit because your landlord says that you failed to pay rent or damaged the apartment, you must generally go to Small Claims Court to resolve the dispute. Before forwarding this complaint to our office, you must attempt to resolve the matter with your landlord.

Please complete this form only if your attempt to resolve your complaint with the landlord has been unsuccessful. Each tenant should submit a separate complaint form. You may duplicate this form or obtain additional copies from our office.

Be sure to attach a copy (**NOT THE ORIGINAL**) of your lease, receipt or other evidence that you paid a security deposit and any other pertinent letters or documents.

PLEASE PRINT

1. YOUR NAME: _____

ADDRESS (CURRENT) _____

Street No.

Apt. No.

City

State

Zip Code

TELEPHONE: HOME _____ BUSINESS _____

ADDRESS OF APARTMENT INVOLVED, IF DIFFERENT FROM CURRENT ADDRESS: Apt. No. _____

Street No.

City

State

Zip Code

2. FORMER OR CURRENT LANDLORD INVOLVED IN THIS COMPLAINT: _____

ADDRESS _____ TEL.: _____

Street No.

City

State

Zip Code

3. MANAGING AGENT'S NAME: _____

ADDRESS: _____ TEL.: _____

Street No.

City

State

Zip Code

4. APPROXIMATE NUMBER OF APARTMENTS IN BUILDING: _____

5. YOUR COMPLAINT CONCERNS:

- () Landlord failed to return rent security deposit.
 () Landlord failed to place security deposits in trust account.
 () Landlord failed to pay interest on security deposit.

6. (a) AMOUNT OF SECURITY DEPOSIT AND DATE PAID: \$ _____ Date: _____

(b) MOST RECENT MONTHLY RENT: \$ _____

(Page 1 of 2)

7. (a) DATE YOU MOVED INTO APARTMENT: _____
 (b) DATE YOU MOVED OUT OF APARTMENT (if applicable): _____
 (c) TERM OF FIRST LEASE: _____ to _____

8. YOUR APARTMENT IS: () Rent Controlled () Rent Stabilized

9. Date you complained to the landlord: _____
 Person contacted: _____ By phone: _____ Letter: _____ In person: _____ Other: _____

10. Have there been any court proceedings regarding your rent security deposit? () Yes () No
 Has there been any other litigation concerning your apartment? If so, briefly summarize the issues. _____

11. If the building has changed landlords during your residence, please list them in order, starting with first. Use your recollection or your own records (such as rent checks or receipts) to prepare the list. Feel free to add a page if more space is needed.

<u>LANDLORD'S NAME, ADDRESS AND TELEPHONE NUMBER</u>	<u>PERIOD OF OWNERSHIP FROM -- TO</u>	<u>MANAGING AGENT'S NAME, ADDRESS & TELEPHONE NUMBER</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

12. Indicate the amount of interest, if any, you have received on your security deposit and the period involved.

SPACE FOR ADDITIONAL INFORMATION, ANSWERS OR COMMENTS: _____

IMPORTANT: In order to resolve your complaint, we may send a copy of this form to the parties you have named.

In filing this complaint, I understand that the Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from misleading or unlawful business practices. I also understand that if I have any questions concerning my legal rights or responsibilities, I should contact a private attorney. I have no objection to the contents of this complaint being forwarded to the landlord the complaint is directed against. The above complaint is true and accurate to the best of my knowledge.

I also understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.

DATE: _____ TENANT'S SIGNATURE _____



The New York State Attorney General's office investigates security deposit complaints.

For Rent Security Complaint forms and information, contact the New York State Office of the Attorney General, Consumer Protection Bureau Hotline, 120 Broadway, 3rd Floor, New York, NY 10271, 800-771-7755, or visit the AG's website at: www.oag.state.ny.us.

3. Step Three: File a Small Claims Lawsuit

The small claims court is the fastest and easiest place to sue your landlord for your security deposit and interest. It's also the cheapest, since the filing fees are low and you can represent yourself. In addition to suing for your security deposit you can make a monetary claim for a breach of the warranty of habitability or a lease obligation. (See Chapter 9, Section G.) However, the maximum amount you can sue for in small claims court is currently \$3,000.

Disputes typically go before a judge (there are no juries) within 30 to 60 days, and there are no formal rules about evidence. While it makes sense to sue promptly, you technically have up to six years to do so under the state statute of limitations. (CPLR § 213.)

While many small claims cases are simple enough that you can represent yourself, you may be represented by counsel if you want. A landlord also has the choice of representing himself or hiring an attorney to do so, unless the landlord is organized as a corporation, in which case he must be represented by an attorney.

a. How Small Claims Court Works

Small claims court procedures are informal and simplified. Strict rules on presenting and admitting evidence don't apply. You simply present your case orally to the judge and show the judge (and the landlord) any evidence that supports your case. (See Subsection b, below.) Then it's your landlord's turn to present his side of the story. The judge may make a decision right away, or "reserve" decision. That means that the judge will issue a written decision a few days later that the clerk will mail to you.

In some localities, only judges hear small claims court cases. Both judges and arbitrators are available to hear small claims court cases in New York City, Nassau and Westchester counties, the cities of Buffalo and Rochester and some other locations. An arbitrator is an experienced lawyer who serves without pay. An arbitrator can try your case if both you and your

landlord agree. The up side of having an arbitrator hear the case is that your case will be called far sooner on the day it is set to be heard, since there are almost always more arbitrators than judges. The down side is that once an arbitrator determines a case, the decision is final. That means that you could get stuck with an unfair decision. Neither you nor the landlord can appeal, as you can with small claims court cases heard by a judge.

b. How to Prepare for a Small Claims Court Hearing

If you are disputing your deductions for repairs or cleaning, you'll need tangible evidence showing the premises were in good condition when you left. Here is the kind of evidence that will bolster your case:

- A copy of an Apartment Inspection Checklist (such as the one shown in Chapter 6), that you should have filled out with the landlord when you moved in and moved out, signed by both you and the landlord. This is particularly important if the landlord admitted, on the Checklist, to damaged or dirty conditions when you moved in.
- Photos or videos of the premises before you moved in which show the very condition your landlord is trying to blame on you.
- Photos or videos of the premises when you left which contradict the landlord's claims of mess or damage.
- Receipts or a canceled check for cleaning (particularly of carpets and drapes) and repair.
- One, or preferably two witnesses who were familiar with the property, saw it just after you removed your belongings and who will testify that you left the place in good condition. Building employees or people who helped you move out are particularly effective witnesses. There is no rule that says you can't have a close friend or relative testify for you, but given a choice, it's better to have a witness who's neither a friend nor kin.
- If it's difficult for a witness to come to court, a written statement (a signed letter) or affidavit (a sworn statement signed before a notary public) can be used. Documents, however, usually aren't as effective as live testimony. If you do present a written statement from a witness, make sure the statement includes the date of the event, describes exactly what he or

she saw in terms of damage, lists any credentials that make the person qualified to testify on the subject and presents any other facts that have a bearing on the dispute.

c. The Demand Letter

If you decide that it is worthwhile to sue your landlord for the return of your security deposit, your first step is to write a letter asking for the money you're owed. Though not legally required for every small claims court case, demand letters can be useful in trying to settle your dispute and are an excellent opportunity to carefully organize the case you will present in court. The letter you wrote requesting the refund of your security deposit (see Section 1, above) can serve as your demand letter.

d. Should You Sue?

If your demand letter does not produce results, think carefully before you rush off to your local small claims court. Review your items of evidence, such as before-and-after photos, which show that you returned the unit in good condition. If you lack a substantial amount of evidence, you may end up losing, even though you are in the right. Small claims court is rarely about justice, but always about preparation and skill. If your landlord is willing to compromise, but you need some help doing so, you might consider mediation as an alternative (see "The Mediation Alternative," below).

e. Penalties for Violating Security Deposit Laws

In addition to ordering your landlord to return whatever amount was wrongfully withheld from your security deposit, the court will usually also order the landlord to pay interest from the date your deposit should have been refunded to you (usually, 30 days from the date the lease or rental agreement ended). If the landlord deliberately and unreasonably withheld the security deposit, the court *could* order punitive damages to punish the landlord for egregious

conduct. But if the dispute was reasonable, punitive damages aren't appropriate. If your lease or rental agreement has an attorney fees clause, you may also be awarded your court costs and legal fees, if any, if you prevail.



***Everybody's Guide to Small Claims Court*, by Ralph Warner (Nolo), explains small claims court strategy and procedure, including how and where to serve court papers, how to collect your money and details on appeals.** The New York State Unified Court System has a comprehensive brochure, "A Guide to Small Claims Court," that explains the process and how to collect a judgment. This publication is available free at the Clerk's Office in each Small Claims Court. You can access it online at www.courts.state.ny.us/ithaca/city/webpageguidetosmallclaims.html.

The Mediation Alternative

Mediation is a voluntary process used to resolve conflict with the help of a neutral third person, called a mediator. No one may be forced to show up at a mediation session. You and your landlord must both consent. The mediator does not render a decision but assists you and your landlord to explore ways in which you may resolve your dispute. A written binding agreement can be drawn up to document your agreement as to how the security deposit proceeds are to be distributed.

Community dispute resolution centers offering mediation under contract with the state courts are available in every county. Normally, there is no charge or a small filing fee for this service. Cases are heard quickly at a time and place that's convenient to you and your former landlord. Appendix A contains a list of dispute resolution centers throughout the state.





Getting Legal Help

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7his book should prepare you to deal with most routine legal questions and issues without a lawyer. It provides a good working picture of the legal principles and procedures necessary to handle common problems with landlords, managers, supers, other tenants and government agencies. Just the same, there may still be times when good advice from a specialist in landlord-tenant law will be helpful, if not essential—for example, if your valuable long-term rent-regulated tenancy is threatened or you're sued for significant money damages for breaking your lease, you may well decide that the value of what's at stake justifies the time, expense and effort involved in consulting with a lawyer.

Throughout this book, we point out specific instances when an attorney's advice or services may be useful. But since most tenants can't afford all the services a lawyer might offer, at \$150 to \$350 an hour, you obviously need to set priorities. When thinking about a legal problem, ask yourself: "Can I do this myself?" "Can I do this myself with some help from a lawyer?" "Should I simply put this in my lawyer's hands?" Be sure to ask yourself "Is the amount at stake high enough—or the violation of a legal right serious enough—to justify the legal fees?"

Or, put another way, your challenge isn't to avoid lawyers altogether, but rather to use them on a cost-effective basis. Many of you will want to know in advance whether you qualify for free legal help from a community legal services program or volunteer lawyer project. (Section B, below, discusses these services.) And for those who earn too much to qualify for free legal help, your challenge is learning how to effectively find, hire and work with a lawyer when necessary. This chapter will help both groups of tenants—those who qualify for free help and those who will have to pay—through the process of finding and working with a legal expert. It also explains how to research and keep up to date on landlord-tenant law.

A. How Lawyers Can Help Tenants

You don't need to talk to a lawyer every time you have a legal question, but here are some important tasks lawyers can perform for tenants:

- review key documents such as a lease, lease rider or surrender agreement to make sure that

your rights are protected and that you understand all key provisions

- confirm that you have a good claim or defense in a lawsuit—whether it's a dispute over repairs, a security deposit or a rent overcharge for a rent-regulated apartment
- make a quick phone call or write a letter to the landlord and get a problem, such as an unfulfilled repair request, resolved fast
- help you file an administrative complaint, which you might do if you feel you've been a victim of discrimination
- summarize and point you to the law that applies in a given situation—for example, when you wish to sublet your apartment
- negotiate a settlement with your landlord—for example, regarding the return of your security deposit
- provide any needed assistance with evictions, including preparing answers and settlement agreements
- handle legal problems that are—or are threatening to become—serious, such as a rent demand or termination notice, and
- represent you in a legal or administrative proceeding, such as a subtenant's personal injury lawsuit.

B. Free or Low-Cost Legal Services

You don't need to be wealthy in order to get good legal representation. Community legal service programs and volunteer lawyers routinely assist low-income tenants who need advice or representation.

1. Community Legal Services

Community legal services programs provide legal assistance to low-income tenants who live in a specific regional area. These private, nonprofit organizations receive financial support from government grants and private donations. Legal services are provided free to tenants who meet certain eligibility requirements based on income and household size. While guidelines vary, depending on the program and type of case, many community legal services programs use federal poverty guidelines to determine financial eligibility for legal services. Generally, if your income is more

than \$17,720 for a single person or \$23,880 for a couple—which is equal to 200% of what the federal government considers to be the 2002 poverty level—you probably won't qualify. Some organizations use an even lower percentage (125% or 187.5%) of the federal poverty level as an income guideline for eligibility. Some organizations also take into account expenses such as childcare, medical bills and debts. Others make exceptions to the income guidelines for seniors and people who are HIV positive.

Community legal services are staffed by attorneys and paralegals who are experienced in handling landlord-tenant disputes and civil litigation, including evictions, rent overcharges, warranty of habitability claims and discrimination complaints. Some programs offer advice over the telephone, while others require a face-to-face appointment. Call the community legal services program in your area (see Appendix A for a complete list) for details on eligibility and services.

2. Volunteer Lawyer Projects

Many tenants who need help defending an eviction lawsuit do not qualify for community legal services because their income exceeds the program guidelines. Yet, they can't afford a private lawyer. To fill this gap, a patchwork of programs known as volunteer lawyer projects have been created by legal service agencies, bar associations and court administrators across the state. These programs consist of private attorneys who go to court in eviction cases to represent low-income tenants who earn too much to qualify for community legal services, but too little to retain their own attorney. Most of these organizations do not have strict income cut-offs, but determine eligibility on a case-by-case basis.

The New York City Housing Court's volunteer lawyer project offers assistance to low-income tenants who are facing eviction. For more information, contact the court clerk for the county in which your case is pending (the phone number is listed on the eviction papers you were served). To find out about volunteer lawyer programs outside New York City, start by contacting your local community legal services program and your local bar association. (See Appendix A for a complete list.)

C. How to Choose a Private Lawyer

Hopefully, you won't ever need to retain a lawyer. But just in case, here are some tips on finding one who can provide the amount and type of legal services you need.

1. Compile a List of Prospects

As a general rule, deep experience in landlord-tenant law is most important. As with so many other areas of the law, the information needed to practice effectively in this field has become increasingly specialized in the past two decades—a general practitioner simply won't do.

Unfortunately, finding a good, reasonably priced lawyer experienced in landlord-tenant legal issues is not always an easy task. If you just pick a name out of the telephone book—even someone who advertises as an experienced landlord-tenant attorney—you may get someone who's not qualified to deal with your particular problem or someone who will charge too much. Also, an attorney that you or a friend has relied on for other legal needs, such as preparing your will or divorce papers, is unlikely to know enough about landlord-tenant law (although that lawyer may know a colleague who *is* capable of handling a landlord-tenant case).

This sorry result is not inevitable—there are good tenants' lawyers who charge fairly for their services. Here's how to find them.

a. Get Recommendations From Other Tenants

The best way to find a suitable attorney is through a trusted friend, relative or co-worker who has had a satisfactory experience with one. Your best referral sources are other tenants in your area. Ask the names of their lawyers and a little bit about their experiences. Your building's tenant association, if one has been formed, will likely know of lawyers who have experience in landlord-tenant law and related legal issues. Appendix A includes phone numbers and addresses for tenant advocacy associations throughout the state. If you have a regular lawyer you use for estate planning or other legal needs, find out whether she can recommend someone experienced in landlord-tenant law.

If you get a lead from a person who has actually worked with the recommended lawyer, find out what the person liked about the lawyer and why. Ask

how the legal problem turned out—was the lawyer successful? (And if the case wasn't won, did the lawyer seem to do as good a job as possible, under the circumstances?) Ask about the lawyer's legal abilities, communication skills and billing practices. Ask everyone: If they had another landlord-tenant legal problem, would they turn to this lawyer again?

Here are some specific questions to ask your leads.

Did the lawyer:

- Respond promptly to your telephone calls and other communications?
- Keep you informed of developments in your lawsuit or other legal dispute?
- Properly itemize your bills, in line with the costs projected at the outset?
- Handle your case personally or hand it off to a less experienced lawyer in the same firm?
- Respect your feelings about how your legal dispute should be handled?
- Deliver what she promised?

b. Contact Lawyer Referral Services

You can also check out lawyer referral services offered by local bar associations. Keep in mind that all lawyer referral services are not created equal. Some services can offer you little more than the names of a few attorneys in your area who may (or may not) have enough experience to meet your needs. Other referral services carefully screen the attorneys they refer to consumers. A good place to start is with the New York State Bar Association Lawyer Referral and Information Service (phone 800-342-3661 or 518-463-3200; www.nysba.org). Appendix A lists 21 other lawyer referral services throughout the state.

2. Shop Around

After several reliable people give you the names of hopefully top-notch prospects, and you've done a little research on your own, your job has just begun. Call each lawyer and explain why you need legal advice. Some lawyers take these calls directly; others have their staff screen calls from potential clients to weed out problems that are clearly outside the lawyer's area of expertise. The lawyer or screening person will usually ask some basic questions about why you need legal advice, to determine whether a more detailed discussion is in order. If so, the lawyer or staffer will schedule a meeting with you.

It's important to talk with each attorney and make your own evaluation. If you need additional references, get names of some of the lawyer's tenant clients so you can ask them questions like those listed above. After evaluating the attorney based on this phone conversation (and perhaps after contacting references), you may decide to proceed to a face-to-face meeting.



You may have to pay for the privilege. Some lawyers require potential clients to pay a consultation fee to meet and discuss their legal concerns. This is usually a flat fee, sometimes up to several hundred dollars. The consultation fee will generally cover the lawyer's time reviewing documents important to your case, doing research and meeting with you. If you can find the right lawyer and afford the charge, this will be money well spent. But always ask about consultation fees before scheduling the first meeting.

3. Prepare to Meet the Lawyer

Before your first meeting, pull together all the information the lawyer will need to evaluate your problem. Write down, in chronological order, the main events and conversations leading to the dispute with your landlord. Also, jot down the names and phone numbers of any important witnesses the lawyer might need to interview. Gather any documents the lawyer should review—for example, your lease or a termination notice from the landlord—and make copies to bring with you (or send early if the lawyer requests).

Be prepared to freely discuss the facts of your situation. If you hold back important information because you think it makes you look bad or weakens your claim, you won't receive a candid assessment of your situation or sound advice about how to avoid further trouble. Keep in mind that the conversation is privileged—meaning no one can force you or the lawyer to disclose what either of you said in private conversations about your legal matters. This is true even before you actually hire the lawyer—and even if you decide not to hire the lawyer at all.



Don't hire a lawyer sight unseen. No matter how positive your initial conversation with a lawyer or how glowing the referral, it is never a good idea to hire a lawyer without meeting face to face. You have to assess the lawyer's demeanor and professionalism, how the lawyer interacts with you and many other intangibles that go into a solid working relationship. And few lawyers

will take on a case—particularly one that might turn into a lawsuit—without meeting the client.

4. How to Evaluate a Lawyer

Here are some things to look for in your first meeting:

- **Experience in landlord-tenant matters and your specific legal problems.** Explain your legal problem and ask for the person's background and experience in this area. If you're a rent-controlled or rent-stabilized tenant, you'll need a lawyer who can navigate the complex web of laws and regulations that protect rent-regulated tenants. If you are facing a lawsuit, you will need help from a litigator—a lawyer who regularly handles lawsuits all the way through trial and knows his way around a courtroom. If you need someone to review your lease, litigation experience isn't necessary.
- **Personal rapport and communication skills.** You'll want a lawyer who listens well. Even at this early stage, are you getting answers to your questions? Do you feel comfortable talking honestly to the lawyer? Stay away from lawyers who make you feel uncomfortable asking questions—no matter how experienced and well-recommended a lawyer is. Your lawyer's communication skills and style will be especially important if you are facing a lawsuit.
- **Reasonable fees and a clear billing structure.** Section D explains what you should know about legal costs and various fee arrangements with lawyers and how to avoid disputes over fees.
- **Flexibility.** Look for someone who's open to non-court options, such as mediation, for handling a particular legal problem.
- **Willingness to let you be as actively involved as you want.** For example, you might wish to do the initial legal work in filing a services or rent overcharge complaint for a rent-regulated apartment, but reserve the option to turn it over to a lawyer if the case becomes hotly contested or complicated. If you're a real self-helper, look for someone who doesn't resent your participation and control. One key to figuring out if a lawyer is really willing to help you help yourself is to ask: Is he willing to answer your questions over the phone and charge only for the brief amount of time the conversation lasted? If

instead, the lawyer indicates that he prefers to provide advice in more time-consuming (and therefore profitable) office appointments, you'll want to keep looking. Just because your lawyer has specialized training, knowledge, skills and experience in dealing with legal matters is no reason for you to abdicate control over legal decision-making and how much time and money should be spent on a particular legal problem.

D. Legal Fees

Many disputes between lawyers and clients are about fees. This shouldn't be surprising—lawyers charge a lot of money for their time, no matter what results. To protect against problems over attorney fees, be sure to work out a fee arrangement with your lawyer before any legal work starts. Ask the lawyer how she charges (by the hour or in some other manner), what her hourly rate is and what she thinks your total legal bill will be.

1. How Lawyers Charge for Their Time

There are four basic ways that lawyers charge for their services, depending on the type and amount of legal help you need.

a. Hourly Fees

Usually, you can get competent services for \$150 to \$250 an hour, with most lawyers billing in ten- or 15-minute increments. Keep in mind that any time the lawyer spends on you—talking on the phone, reviewing documents or doing research—is billable.

Comparison shopping among lawyers will help you avoid overpaying. But the cheapest hourly rate isn't necessarily the best. You can often benefit by hiring a more experienced tenant's attorney, even if her hourly rates are high, since she will be farther along the learning curve than a general practitioner, and should take less time to review and advise you on the particulars of your legal matter. In many cases, the lawyer will ask you for an advance of a few hundred dollars or more before she will represent you on an hourly basis.

b. Flat Fees

Sometimes, a lawyer will quote you a flat fee for a specific, fairly straightforward job. For example, a

lawyer may charge a few hundred dollars to represent you in court for a routine eviction case for nonpayment of rent when you have a valid defense.

c. Contingency Fees

This is a percentage (such as one-third) of the amount the lawyer obtains for you in a negotiated settlement or through a trial. If the lawyer recovers nothing for you, there's no fee. Contingency fees are common in personal injury cases, but relatively unusual for the kinds of legal advice and representation tenants usually need. Contingency fees are never appropriate in eviction defense, unless there's a hefty financial counterclaim.

2. Paying for Costs

In many cases, you'll be paying for more than just the lawyer's time. You might also have to pay legal costs—the expenses the lawyer incurs while handling your legal work. If you are seeking legal advice to review your lease or help you prepare a request for permission to sublet, you will probably be facing minimal costs—perhaps just the price of copying documents and postage. However, if you are involved in a lawsuit, your costs will be substantial. You will have to pay for depositions, expert witnesses, private investigators, court fees and exhibits. Ask your lawyer ahead of time for a description and estimate of the costs you might have to pay.

Lawyers charge their clients for costs in different ways. Some require clients to deposit a sum of money with the lawyer, to be used to pay costs as they accrue. Other lawyers bill clients monthly for costs, or bill for everything when the legal work is finished. Find out how your lawyer plans to bill for costs.



Think twice about hiring a lawyer who bills for basic operating expenses.

These include the law firm's conference room or something that the lawyer needs to stay in business, such as local phone service. If a lawyer is intent on nickel-and-diming you to death with costs, look elsewhere.

3. Get It in Writing

Once you have worked out the financial details, ask for a written fee agreement—basically an explanation of how the fees and costs will be billed and paid. Make sure the written agreement includes every

important detail—including the per-hour billing rate or other charges, how often you will be billed, whether you will be required to deposit money in advance, how costs are billed and when the lawyer will be paid. As part of your discussions about your written agreement, negotiate for an overall cap on what you can be billed absent your specific agreement. If a lawyer will be delegating some of your legal work to a less experienced lawyer, paralegal or secretary in his office, that work should be billed at a lower hourly rate—and that rate should be included in the written fee agreement.

E. Working With Your Lawyer

To get the best representation possible, you must work well with your lawyer—and make sure your interests are being safeguarded. Start by following these tips:

- **Be honest.** Tell your lawyer all the facts that relate to your legal problem. Armed with this information, your lawyer can figure out how best to prevent legal trouble and meet your needs.
- **Be prepared before you meet.** Whenever possible, send your questions in writing to your lawyer before meetings, even phone meetings. That way the lawyer can find answers if he doesn't know them off the top of his head without having to call you back and charge for a separate phone conference. Early preparation also helps focus the meeting so there is less of a chance of digressing into (and having to pay to discuss) unrelated topics.
- **Keep in touch.** Stay in regular contact with your lawyer to find out what's going on in your dispute. Keep your lawyer apprised of any upcoming vacations or other lengthy absences, in case your presence will be required at upcoming legal proceedings.
- **Keep track of important documents and deadlines.** Keep a file that contains all the important documents relating to your legal dispute. This will allow you to discuss your case with your lawyer intelligently and efficiently—even over the phone. Mark important deadlines on your calendar.
- **Do your own research.** By learning as much as you can about the laws and court decisions

that apply to your dispute, you will be able to monitor your lawyer's work, make informed decisions about settlement offers and—perhaps—keep yourself out of legal trouble the next time around.

- **Check billing statements.** Every bill you receive from your lawyer should list the costs and fees incurred that month. If you have questions about your bill or don't agree with all the charges, talk to your lawyer about it.
- **Show that you're an important client.** Mutual respect is key in an attorney-client relationship. The single most important way to show your lawyer how much you value the relationship is to pay your bills on time. And drop your lawyer a line when you've recommended him or her to your fellow tenants.



Recommended reading on lawsuits. Contact your local courthouse or ask a local tenant advocacy group (see the list in Appendix A) for information on any step-by-step guides to defending evictions in your area. *Represent Yourself in Court*, by Paul Bergman and Sara Berman-Barrett (Nolo), offers general advice on handling any civil lawsuit on your own or with a lawyer's help. For more information on lawsuits, see *The Lawsuit Survival Guide: A Client's Litigation Companion*, by Joseph Matthews (Nolo). This book covers every aspect of a civil lawsuit, from choosing a lawyer through deciding whether to appeal.

F. Resolving Problems With Your Lawyer

If you are not satisfied with how your legal matters are being handled, you have the right to withdraw from the attorney-client relationship at any time. Keep in mind, though, that court approval may be required in some cases, such as when you are in the middle of a contested lawsuit. And, if you owe the attorney legal fees, your attorney may be able to place a “retaining lien” on your files and withhold your legal papers until you've paid for any services rendered to you up to the point of discharge. The attorney must refund the balance of any fees you paid in advance that have not been applied to legal fees or expenses.

If you decide to change attorneys, be sure to fire your old lawyer before you hire a new one. Otherwise, you could find yourself being billed by both lawyers at the same time. Also, be sure to get all

important legal documents back from a lawyer you no longer employ. Tell your new lawyer what your old one has done to date and pass on the file. The first thing to do is tell your lawyer, in writing, that you are taking your business elsewhere. Ask your former lawyer to send all of your files and related materials to your new lawyer. Your new lawyer should also send your former lawyer a letter saying that the new lawyer is taking over the case.

1. When to Make the Change

If you see a problem emerging with your lawyer, don't just sit back and fume; call or write your lawyer. Whatever it is that rankles, have an honest discussion about your feelings. Maybe you're upset because your lawyer hasn't kept you informed about what's going on in your lawsuit or has missed a promised deadline. Or maybe last month's bill was shockingly high or you question the breakdown of how your lawyer's time was spent. Since changing lawyers will take time and money, it doesn't make sense to fire a lawyer at the drop of a hat. But do give serious consideration to switching lawyers if and when:

- your dispute becomes a lawsuit and your lawyer doesn't have litigation experience
- you and your lawyer cannot agree on important strategic decisions, or you clash personalities and simply can't get along
- you and your lawyer consistently disagree about fee and cost issues
- your lawyer fails to stay in touch or stops returning your calls, or
- you lose confidence in your lawyer—for example, she's missed an important court deadline, misplaced crucial documents or done something unethical.

2. How to Resolve Problems With Your Lawyer

Firing a lawyer may not be the most appropriate step. Here are some tips on resolving specific problems.

Mediate. If you have a dispute over fees, the local bar association may be able to mediate it for you. Appendix A includes a list of local bar associations.

File a complaint. If a lawyer has violated legal ethics or broken the law—for example, if you've discovered that your lawyer has a conflict of interest, is overbilling, is not representing you zealously or is stealing money—you can file a written complaint with a New

York State Supreme Court attorney grievance committee. The committee will investigate and, if necessary, prosecute your complaint of professional misconduct against the lawyer. Serious violations can result in disciplinary action for the lawyer or even suspension from the practice of law anywhere in the state for a specified time period. There are eight attorney grievance committees within the state. (A complete list is in Appendix A.) File your complaint with the committee serving the county where the attorney's office is located.

If you think that your lawyer has made a major mistake—for example, missing the deadline for filing a case—you can sue for malpractice. Many lawyers carry malpractice insurance, and your dispute may be settled out of court.

G. Attorney Fees in a Lawsuit

If your lease or written rental agreement has an attorney fees provision, you are entitled to recover your reasonable attorney fees if you win a lawsuit based on the terms of that agreement. As discussed in Chapter 2, an attorney fees clause in your lease or rental agreement usually works both ways. So you could be liable for the landlord's reasonable attorney fees if you lose.

The prevailing party (either you or the landlord) will end up with a money judgment against the losing party for a specified amount of money (the reasonable fees). Even if you win your case, there's no guarantee that a judge will award attorney fees

Your Rights As a Client

New York has adopted a "Client Bill of Rights." (22 NYCRR Part 1210.) As a client of a New York attorney, you have the following rights:

1. The right to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.
2. The right to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time. Keep in mind, though, that court approval may be required in some matters, and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge.
3. The right to your lawyer's independent professional judgment and undivided loyalty, uncompromised by personal or professional conflicts of interest, such as your lawyer's own financial or business interests or those of another client.
4. The right to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written, itemized bill from your attorney at

reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory.

5. The right to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
6. The right to be kept informed as to the status of your case or transaction and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your legal matter.
7. The right to have your legitimate objectives respected by your attorney, including whether to settle your case (court approval of a settlement is required in some matters).
8. The right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.
9. The right to have your attorney conduct himself or herself ethically, in accordance with the New York Code of Professional Responsibility (9 NYCRR § 1200 and following), which sets ethical standards for the legal profession.
10. The right to representation regardless of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.

equal to your attorney's bill. If the judge decides that the bill is exorbitant, she'll reduce the figure—and you'll be responsible for the balance, unless you make other arrangements with your attorney. In addition, there's no guarantee that you will ultimately be able to collect the money from the landlord if you win. If the landlord doesn't pay the judgment, you will have to use the available civil remedies, such as wage garnishment, to collect the debt.

H. Doing Your Own Legal Research

Using this book is a good way to educate yourself about the laws that affect your business—but one book by itself may not be enough. You may want to also consult legal updates published by tenant groups, found in their newsletters and on their websites, which keep members abreast of new laws and regulations that affect rental property. For instance, TenantNet, an Internet website, keeps a close eye on legal developments that affect New York tenants (see “Check Out TenantNet,” below).

We recommend that you know where to find state, local and federal laws that affect your tenancy. At one time or another, you'll probably need to do some further research. You may want to read a specific court case or research a more open-ended question about landlord-tenant law—for instance, your right to share your apartment with family members. Section I, below, shows how.

Lawyers aren't the only source for legal help. There's a lot you can do on your own. You can get the text of almost every federal and state statute, free, online. Rules put out by federal and New York state regulatory agencies are often available, too, and the Internet's legal resources grow every day. We list the websites where you can get your hands on legal information in the “Guide to New York Landlord-Tenant Laws,” below.

If you don't have access to the Internet, visit one of the many law libraries that are open to the public, such as libraries at county courthouses and some publicly funded law schools. If you're in a large city or town, don't overlook the reference department of the public library. The New York City Public Library, for instance, has a fairly decent legal research collection. Also, ask about using the law library in your own lawyer's office.



Keep up to date. Some law compilations, both on the Internet and in print, are out of date. Never rely on an old set of laws or regulations, because laws are frequently amended. Always make sure the source you're checking contains the most up-to-date legislative amendments for the law you're reading.

Recommended Reading on Legal Research

We don't have space here to show you how to do your own legal research in anything approaching a comprehensive fashion. To go farther, we recommend *Legal Research: How to Find & Understand the Law*, by Stephen Elias and Susan Levinkind (Nolo). This nontechnical book gives easy-to-use, step-by-step instructions on how to find legal information. For an overview of legal research, see Nolo's website at www.nolo.com/lawcenter/statute/index.cfm.

I. Where to Find State, Local and Federal Law

Every tenancy is governed by state, local and federal law. We refer to the major landlord-tenant laws, including rent regulations and laws, throughout this book and include citations so that you can do additional research. This section summarizes key landlord-tenant laws enacted by state, local and federal governments and explains where to find electronic (online) and paper copies. Many of the government agencies mentioned here offer publications explaining laws and regulations that affect tenants. You can often find this material on the agencies' websites (contact information provided below).



In some areas, like antidiscrimination standards, laws overlap. When they do overlap, the stricter laws will apply. In practical terms, this usually means that the laws that give tenants the most protection (rights and remedies) will prevail over less protective laws.

1. State Laws and Regulations

New York State laws and rules regulate many aspects of the landlord-tenant relationship, including security

deposits, discrimination, housing standards, landlords' repair and maintenance responsibilities, subletting and eviction procedures.

New York State statutes, which are enacted by the state legislature, are collected in volumes and are available online, in most public libraries and in all law libraries. The statutes are organized by title and section, with each title covering a particular subject matter. The key state laws are the Real Property Law, Real Property Actions and Proceedings Law, Multiple Dwelling Law, Multiple Residence Law, General Obligations Law, Emergency Tenant Protection Act (state rent stabilization laws) and the Emergency Housing Rent Control Act (state rent control laws).

So called "annotated codes," such as *McKinney's Annotated Laws of New York*, contain not only the full text of the laws, but also a brief summary of some of the court decisions interpreting each law. *McKinney's* also supplies references to treatises and articles that discuss the law, has a comprehensive topic index and is kept up-to-date with annual supplements (often stuck in a pocket inside the back cover of each volume).

State agencies, such as the Division of Housing and Community Renewal (DHCR), the Department of Labor and many others, make their own rules and regulations, many of which contain tenant protections. You can look up a state rule or regulation in a multi-volume book called the "Official Compilation of Codes, Rules and Regulations of the State of New York" ("NYCRR"). For example, the Emergency Tenant Protection Regulations (companion regulations to the Emergency Tenant Protection Act) may be found at Volume 9 of the NYCRR, starting at Section 2500.1 or 9 NYCRR § 2500.1.

The NYCRR is available in most law libraries and in some public libraries. You can't access the entire NYCRR online, but some state agencies make all or some of their regulations available on the Internet. Website addresses for all of the agencies discussed in this book are listed in Appendix A.

The DHCR, which enforces the laws and regulations relating to rent-stabilized and rent-controlled units on a statewide basis, has a website (www.dhcr.state.ny.us, go to the site's "Rent Administration" area) with official fact sheets, advisory opinions, operational bulletins, policy statements and other DHCR publications. Most importantly, the DHCR site has the updated text of the rent control or rent stabilization laws and regulations that govern your tenancy.

Paperback collections that concentrate on landlord-tenant laws are also available. For instance, *New York Landlord-Tenant Law "Tan Book"* (Matthew Bender & Company), named for the color of its cover, includes all of the current rent stabilization and rent control laws, as well as excerpts from the Real Property and Multiple Dwelling Laws. It is updated annually and is available at any law bookstore or by calling the publisher (800-833-9844) or visiting its website (www.lawcommerce.com).

To access state law on the Internet, visit the New York Assembly website at www.assembly.state.ny.us. Click "Assembly Legislative Information System," then "New York State Laws," then either "Consolidated" or "Unconsolidated" laws. Finally, click the name of the law you want to see or download. (Rent regulatory laws are part of the Unconsolidated Laws section. The Real Property Law, the Penal Law and the General Business Law are part of the Consolidated Laws.) See "Guide to New York Landlord-Tenant Laws," below for more information on where to find state laws online.

2. NYC and Local Ordinances

Local ordinances will also affect your rental, particularly if you live in rent-regulated property in New York City.

a. NYC Ordinances

The Administrative Code of the City of New York ("NYC Admin. Code") is a collection of all laws enacted by the City Council and signed by the Mayor. It's where you'll find the NYC Building Code, the Housing Maintenance Code, the Health Code (which includes the window guard law), the Human Rights Law and other city ordinances your landlord is expected to follow.

The "Guide to New York Landlord-Tenant Laws" chart, below, highlights relevant sections of NYC laws, provides a brief description of what each covers and lists online resources, specifically the NYC Rent Guidelines Board (www.housingnyc.com). Here you'll find a current version of the NYC Housing Maintenance Code, guidelines on how your landlord must collect rent increases from rent-stabilized tenants in New York City, a list of rent-stabilized buildings by zip code, a "vacancy lease" calculator and useful information on various housing topics.



Current versions of the entire set of rent control and stabilization regulations are not available online. See Chapter 4 for more information on keeping up-to-date on rent regulations.

b. Other Local Ordinances

Outside of NYC, local ordinances such as health and safety codes, occupancy standards and maintenance and repair requirements may also affect your tenancy. For example, Albany has a fair housing law (Code of the City of Albany, Chapter 187) that establishes fair housing offices to carry out federal and state fair housing laws. Rochester's property code (Chapter 90 of the Code of the City of Rochester) sets occupancy standards and minimum maintenance and repair standards for housing located within the city of Rochester.

If you need to get your hands on a local ordinance, start by contacting your city supervisor's or local mayor's office for information. You may also be able to get information on local laws and regulations online at PiperInfo (www.piperinfo.com/state/states.html). Many counties, towns and villages have websites with their local ordinances available for searching and downloading. PiperInfo is the best source for finding local governments online. First click "New York," then scroll down the page to find your local government's site.

Check Out TenantNet—A Lifeline for Tenants

TenantNet (www.tenant.net) is a rich source of information. Here you can find a searchable database of New York City Housing Court decisions (archived since 1996), as well as over 6,000 administrative decisions of the NYS Division of Housing and Community Renewal (DHCR). The site also has the text of the federal Fair Housing Acts, New York State statutes, the New York City rent stabilization law and code, the NYC rent control law and regulations, the Emergency Tenant Protection Act, the Multiple Dwelling Law and the NYC Housing Maintenance Code. It's best to use TenantNet for news and articles and for reports on latest housing court cases. When checking laws, use the State Assembly website, listed on the "Guide to New York Landlord-Tenant Laws" chart, below, because that is always up to date.



3. Federal Statutes and Regulations

Congress has enacted laws, and federal agencies have adopted regulations to implement these laws. Federal statutes and regulations cover discrimination, credit reporting and landlord responsibilities to disclose environmental health hazards. We refer to relevant federal agencies throughout this book and suggest that you contact them for publications that explain federal laws and regulations that affect tenants.

Throughout this book, we include citations for many of the federal laws affecting tenants. The United States Code (U.S.C.) is the starting place for most federal statutory research. It consists of 50 separate numbered titles, each of which covers a specific subject matter. Two versions of the U.S. Code are published in annotated form: *The United States Code Annotated*, (U.S.C.A.), (West Publishing Co.) and the *United States Code Service* (U.S.C.S.), Bancroft-Whitney/Lawyer's Co-op). Most law libraries (and many public libraries) carry one or the other. Most federal regulations are published in the Code of Federal Regulations (CFR), organized by subject into 50 separate titles.

To access the U.S. Code online, visit the Cornell Law Information Institute (www.law.cornell.edu). This site provides the entire United States Code, as well as the federal Code of Regulations. You can also access New York State laws here, as well as decisions of the U.S. Supreme Court and the New York Court of Appeals (New York's highest court).

Guide to New York Landlord-Tenant Laws

Law or Regulation	Relevant Sections	What It Covers	Where to Find Online
NEW YORK STATE LAWS			
Real Property Law ("RPL")	Article 7 (§§ 220-238) Article 12-A (§§ 443, 443-a)	Article 7 of the RPL governs landlords' repair and maintenance responsibilities under the state warranty of habitability; delineates a tenant's right to repair and deduct, sublet, assign and share a rental unit with family members and other occupants; covers termination procedures for month-to-month tenancies, as well as other important landlord-tenant issues, including delivery of possession, retaliation, constructive eviction, termination rights of seniors, attorneys fees and unconscionable lease terms. Article 12-A of the RPL covers: real estate brokers and salesman.	www.assembly.state.ny.us/ALIS .
Real Property Actions and Proceedings Law ("RPAPL")	Article 7 (§§ 701-767) Article 7-A (§§ 769-783)	Article 7 of the RPAPL sets the procedural rules on bringing eviction proceedings against tenants, including what rent demands and eviction petition must say, how eviction notices must be served on tenants, and the circumstances in which judges may issue and stay eviction warrants. Article 7-A of the RPAPL covers so-called "rent strikes" by tenants.	www.assembly.state.ny.us/ALIS .
Multiple Dwelling Law ("MDL")	All	MDL covers repair and maintenance responsibilities for landlords of buildings with three or more rental units in cities with 325,000 or more people. Applies in NYC and Buffalo only.	www.assembly.state.ny.us/ALIS .
Multiple Residence Law ("MRL")	All	MRL covers repair and maintenance responsibilities for landlords of buildings with three or more rental units in towns and villages and cities with 325,000 or fewer people. Applies to properties outside NYC and Buffalo.	www.assembly.state.ny.us/ALIS .
General Obligations Law ("GOL")	§§ 7-103, 105, 107, 108	GOL covers rules on collecting, depositing and refunding tenant security deposits.	www.assembly.state.ny.us/ALIS .
Civil Practice Laws and Rules ("CPLR")	§§ 212-215	CPLR sets time limits for lawsuits relating to leases and rental agreements, negligence and rent overcharge.	www.assembly.state.ny.us/ALIS .
Human Rights Law ("HRL"), found in Executive Law ("Exec. L.")	§§ 296, 296-a	HRL prohibits rental housing discrimination by landlords, owners, lessees, real estate brokers and their employees by reason of race, creed, color, national origin, gender, age, disability, marital status or the presence of children who will reside on the premises. Applies throughout the state except in NYC (see NYC Human Rights Law, below).	www.assembly.state.ny.us/ALIS .
Rent Laws & Regulations —Outside NYC			
Emergency Housing Rent Control Law	§§ 1-17. Can be found in New York's Unconsolidated Laws, beginning at § 8581.	State rent control law. Applies to rent-controlled units outside NYC.	www.assembly.state.ny.us/ALIS .
Rent and Eviction Regulations	9 NYCRR §§ 2100 - 2109	State rent control regulations. Applies to rent-controlled units outside NYC.	Up-to-date text not currently online.

Guide to New York Landlord-Tenant Laws (continued)

Law or Regulation	Relevant Sections	What It Covers	Where to Find Online
Rent Laws & Regulations—Outside NYC			
Emergency Tenant Protection Act (“ETPA”)	§§ 1-14. Can be found in New York’s Unconsolidated Laws, beginning at § 8621	State rent stabilization law. Governs all rent-stabilized units outside NYC, granting localities the option of declaring local housing emergencies and instituting rent stabilization. Applies to rent-stabilized units in Nassau, Rockland and Westchester Counties.	www.assembly.state.ny.us/leg
Emergency Tenant Protection Regulations (“ETPR”)	9 NYCRR §§ 2500 - 2510	State rent-stabilization regulations (companion regulations to ETPA). Applies to rent-stabilized units in Nassau, Rockland and Westchester Counties.	Up-to-date version not currently online.
NEW YORK CITY LAWS			
NYC Rent Laws & Regulations			
Local Emergency Housing Rent Control Act	§§ 1(1)-1(17)	New York City rent control law.	www.assembly.state.ny.us/cgi-bin/claws
NYC Rent and Rehabilitation Act	NYC Admin. Code §§ 26-401 to 26-415	New York City rent control law.	Up-to-date version not currently online.
NYC Rent and Eviction Regulations	9 NYCRR §§ 2200-2210	New York City rent control regulations.	Up-to-date version not currently online.
NYC Rent Stabilization Law of 1969 (“RSL”)	NYC Admin. Code §§ 26-501 to 26-520	New York City rent stabilization law.	Up-to-date version not currently online.
Rent Stabilization Code (“RSC”)	9 NYCRR §§ 2520-2530	New York City rent stabilization regulations (companion to RSL).	www.tenant.net/Rent_Laws/RSC
Other NYC Laws			
NYC Housing Maintenance Code (“HMC”)	NYC Admin. Code, Title 27, Chapter 2	Sets repair and maintenance responsibilities for all NYC residential landlords. Also covers safety and security devices, occupancy limits and property registration requirements.	www.housingnyc.com (click housing maintenance code).
NYC Window Guard Law	NYC Admin. Code §§ 17-123	Obligations to notify tenants about law and to supply and install window guards on request.	www.nyc.gov/html/doh/html/win/win.html
NYC Human Rights Law (“HRL”)	NYC Admin. Code §§ 8-102, 9-107	Prohibits rental housing discrimination by owners, landlords, lessees, real estate brokers and their employees. Prohibits housing discrimination by reason of race, creed, color, national origin, gender, age, disability, marital status, citizenship, sexual orientation, lawful occupation or the presence of children who will reside on the premises. Also prohibits employment discrimination against certain protected classes.	Not currently online.
FEDERAL LAWS			
United States Code (“U.S.C.”)	Various Relevant citations are provided throughout this book.	Federal fair housing laws; debt collection practices; lead paint disclosures, employee safety.	www.law.cornell.edu/federal
Code of Federal Regulations (“CFR”)	Various Relevant citations are provided throughout this book.	Rules issued by HUD, the EPA and other federal agencies.	www.law.cornell.edu/federal

J. How to Research Court Decisions

Sometimes the answer to a legal question cannot be found in a statute. This happens when:

- court cases and opinions have greatly expanded or explained the statute, taking it beyond its obvious or literal meaning, or
- the law that applies to your question has been made by judges, not legislators.

1. Court Decisions That Explain Statutes

Statutes and ordinances do not explain themselves. For example, a state law may require your rental unit to be weatherproofed, but that statute alone may not tell you whether that means you must have both storm windows and window screens. Chances are, however, that other tenants before you have had the same questions, and they may have come up in the context of a lawsuit. If a judge interpreted the statute and wrote an opinion on the matter, that written opinion, once published, will become “the law” as much as the statute itself. If a higher court (an appellate court) has also examined the question, then its opinion will rule.

To find out if there are written court decisions that interpret a particular statute or ordinance, look in an “annotated code” (discussed in Section I, above). If you find a case that seems to answer your question, it’s crucial to make sure that the decision you’re reading is still “good law”—that a more recent opinion from a higher court has not reached a different conclusion. To make sure that you are relying on the latest and highest judicial pronouncement, you must use the library research tool known as Shepard’s. *Legal Research: How to Find & Understand the Law*, by Stephen Elias and Susan Levinkind (Nolo), has a good, easy-to-follow explanation of how to use the Shepard’s system to expand and update your research.

2. Court Decisions That Make Law

Many laws that govern your tenancy aren’t based on statutes or ordinances. These laws are entirely court-made, and are known as “common law.” Researching common law is more difficult than statutory law, because you do not have the launching pad of a statute or ordinance. With a little

perseverance, however, you can certainly find your way to the cases that have developed and explained the legal concept you wish to understand. A good beginning is to ask a law librarian for any “practice guides” written in the field of landlord-tenant law. These are outlines of the law, written for lawyers, that are kept up-to-date and are designed to get you quickly to key information. Because practice guides are so popular and easy to use, they are kept in the library reference section and cannot be checked out. More sophisticated research techniques, such as using a set of books called “Words and Phrases,” (which sends you to cases based on key words) are explained in the Nolo book *Legal Research*, mentioned above.

3. How to Read a Case Citation

If a case you have found in an annotated code (or through a practice guide or key word search) looks important and relevant to your situation, you may want to read the opinion. You’ll need the title of the case and its “citation,” which is like an address for the set of books, volume and page where the case can be found.

Although it may look about as decipherable as hieroglyphics, once understood, a case citation gives lots of useful information in a small space. It tells you the names of the people or companies involved, the volume of the reporter (series of books) in which the case is published, the page number on which it begins and the year in which the case was decided.

EXAMPLE: *Smith Realty Co. v. Jones*, 123 N.Y.S.2d 456 (1994). Smith and Jones are the names of the parties having the legal dispute. The case is reported in volume 123 of the New York Supplement, Second Series, beginning on page 456; the court issued the decision in 1994.

New York publishes decisions rendered by all of its appellate courts (and some trial-level courts) in so-called “official” state reporters. There are three official case reporters:

New York Reports (“N.Y.” and “N.Y.2d”). Here, you’ll find all of the decisions of New York’s highest court, the Court of Appeals. A decision cited as “123 N.Y.2d 456” may be found in Volume 123 of the New York Reports, Second Series, at page 456.

Appellate Division Reports (“App. Div.” and “App. Div. 2d”). This reporter covers decisions of the state’s intermediary appellate courts (which are broken down into four geographic divisions). A decision cited as “123 App.Div.2d 456” can be found in Volume 123 of the Appellate Division Reports, Second Series, at page 456.

New York Miscellaneous Reports (“Misc.” and “Misc.2d”). Here you’ll find decisions of the Appellate Term, which hears appeals from the NYC Civil Courts, including its housing court part. Certain trial court-level decisions are also included. A decision cited as “123 Misc.2d 456” may be found in Volume 123 of NY Miscellaneous Reports, Second Series, at page 456.

A useful resource is **New York Supplement (“N.Y.Supp.” and “N.Y.Supp.2d”),** an “unofficial” case reporter, which collects all of the decisions reported in the three “official” state reporters described above. Many law offices and libraries save space by keeping only “New York Supplement” volumes on their shelves. A case cited as “123 N.Y. Supp. 2d 456” may be found in volume 123 of New York Supplement, Second Series, at page 456.

The New York Law Journal (“NYLJ.”), a daily newspaper for lawyers, prints lower court decisions issued in New York City, Nassau, Suffolk, Orange and Rockland Counties that often don’t make it into the official reporters or into New York Supplement. Many valuable landlord-tenant decisions are found here (especially on Wednesdays). A decision cited as *Smith Realty Co. v. Jones*, NYLJ, 1/5/99, P. 26, col. 3 (Civ. Ct., N.Y. County) means that you can find the *Smith v. Jones* decision in the January 5, 1999, edition of the newspaper, at page 26, column 3. The case was heard in the New York City Civil Court, in Manhattan (N.Y. County). Old issues of the *New York Law Journal* are available on microfiche at many libraries in the New York City area. You can read excerpts from the *New York Law Journal* on a daily basis for free by visiting its website (www.nylj.com).

For information on court rules, visit *New York Courts and Law Guide* (www.NYLJ.com/guide). This site gives you the details on how to file a lawsuit or an answer in the state’s county, town and village courts. ■



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Throughout this book, we've mentioned dozens of government agencies and organizations that provide legal information and services to New York tenants. For easy reference, we've pulled together one comprehensive list of resources with the address, phone number and website for each group. Our list is organized in these major categories:

- Tenant Unions and Other Advocacy Groups
- Rent Guidelines Boards
- Federal Government Agencies
- New York State Government Agencies
- New York City Government Agencies
- New York City Housing Court Branches
- New York City Small Claims Court Branches
- Dispute Resolution Centers
- Community Legal Services
- Volunteer Lawyer (Pro Bono) Services
- Bar Associations and Lawyer Referral Services
- Attorney Grievance Committees
- Social Services.

For more information on the services or resources of a particular organization or agency listed in this Appendix, see the chapters referenced here.

A. Tenant Unions and Other Advocacy Groups (Chapters 11, 14, 15, 16 and 18)

The following groups provide counseling services to tenants who are experiencing problems with their landlords or who wish to organize tenants at their building or in their community to improve housing conditions. Also, be sure to check out the TenantNet website (www.tenant.net), a valuable source of legal information and resources for New York tenants.

Statewide Associations

New York State Tenants & Neighbors Coalition

105 Washington Street, 2nd Floor
New York, NY 10006
212-608-4320

New York City Groups—Citywide

Met Council on Housing

339 Lafayette Street, #301
New York, NY 10012
212-979-0611
Website: www.tenant.net/Tengroup/Metcouncil

The Citywide Task Force on Housing Court, Inc.

212-962-4795 (in Queens, 718-657-0599)
Website: www.cwtfhc.org
The group has no fixed office. Counselors are available to tenants in each branch of the New York City Housing Court or by phone.

New York City Neighborhood Groups—Neighborhood

Manhattan

Chelsea Coalition on Housing—Chelsea Area

322 W. 17th Street
New York, NY 10011
212-CH3-0544

Cooper Square Committee

61 East 4th Street
New York, NY 10003
212-228-8210
Website: www.coopersquare.org

GOLES (Good Old Lower East Side)—Lower East Side

525 E. 6th Street
New York, NY 10009
212-533-2541

Lower Manhattan Loft Tenants—Downtown

St. Margaret's House
Pearl & Fulton Streets
New York, NY 10005
212-539-3538

Village Independent Democrats—Greenwich Village)

C26 Perry Street (basement)
New York, NY 10014
212-741-2994

West Side Tenants Union

200 W. 72nd Street, Room 63
New York, NY 10023
212-595-1274

Brooklyn**Bensonhurst Tenant Council**

1708 W. 10th Street
Brooklyn, NY 11223
718-256-0404

Oceanhill-Brownsville Tenants Association

319 Rockaway Avenue
Brooklyn, NY 11233
718-498-2700

Bronx**West Bronx Housing and Neighborhood Resources**

3176 Bainbridge Avenue
Bronx, NY 10467
718-798-0929

Groups Outside New York City**United Tenants of Albany, Inc.**

33 Clinton Avenue
Albany, NY 12207
518-436-8997

Greater Syracuse Tenant Network

PO Box 6908
Syracuse, NY 13217-6908
313-475-8092

Mount Vernon United Tenants

40 South 4th Avenue
PO Box 2107
Mt. Vernon, NY 10551
914-699-1114

**B. Rent Guidelines Boards
(Chapter 4)****New York City Rent Guidelines Board****NYC Rent Guidelines Board**

51 Chambers Street, Suite 202
New York, NY 10017
212-385-2934
Website: www.housingnyc.com

Rent Guidelines Boards Outside New York City**Nassau County Rent Guidelines Board**

50 Clinton Street
Room 605
Hempstead, NY 11550
516-481-9494

Rockland County Rent Guidelines Board

9496 North Main Street
Spring Valley, NY 10977
914-425-6575

Westchester County Rent Guidelines Board

55 Church Street
White Plains, New York 10601
914-948-4434

C. Federal Government Agencies**U.S. Department of Justice (Chapter 11)****Headquarters**

950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
202-353-1555
Website: www.usdoj.gov

**Federal Motor Carrier Safety Administration
(Chapter 6)****U.S. Department of Transportation**

Federal Motor Carrier Safety Administration
Public and Consumer Affairs, Suite 600
400 Virginia Avenue, SW
Washington, DC 20024
888-DOT-SAFT (888-368-7238)
Website: www.fmcsa.dot.gov

U.S. Postal Inspection Service (Chapter 8)**U.S. Postal Service**

PO Box 509
New York, NY 10116
212-330-3844
Website: www.usps.gov

**U.S. Federal Communications Commission
(Chapter 6)****FCC Headquarters**

445 12th Street, SW
Washington, DC 20554
888-CALL-FCC (225-5322)
Website: www.fcc.gov

**National Lead Information Center (NLIC)
(Chapter 9)****NLIC Headquarters**

801 Roeder Road, Suite 600
Silver Spring, MD 20910
800-424-LEAD
Website: www.epa.gov/lead/nlic.htm

**U.S. Federal Aviation Administration (FAA)
(Chapter 10)****FAA Eastern Region Office**

JFK Airport
One Aviation Plaza
Jamaica, NY 11434-4809
718-995-5755
Website: www.faa.gov/region/aea

**U.S. Department of Housing and Urban
Development (HUD) (Chapters 1, 8 and 11)****HUD Headquarters**

451 7th Street
Washington, DC 20410
202-708-1422 (Headquarters)
Website: www.hud.gov

HUD New York City Local Office

26 Federal Plaza
Room 3541
New York, NY 10278
212-264-6500

HUD Albany Local Office

52 Corporate Circle
Albany, NY 12203
518-464-4200

HUD Buffalo Local Office

465 Main Street
Buffalo, NY 14203
716-551-5755

**U.S. Environmental Protection Agency (EPA)
(Chapters 2 and 11)****EPA Headquarters**

202 M Street, SW
Washington, DC 20460
202-260-2090
908-321-6671 (lead)
800-767-7236 (radon)
Website: www.epa.gov

EPA New York Regional Office (Region 2)

290 Broadway, 21st Floor
New York, NY 10007-1866
212-637-3000
Website: www.epa.gov/region02

D. New York State Government Agencies**New York State Attorney General's Office
(Chapters 5 and 18)****Headquarters**

120 Broadway
New York, NY 10271
212-416-8000
Website: www.oag.state.ny.us

**New York State Department of Health
(Chapter 9)****Headquarters**

Corning Tower
Empire State Plaza
Albany, NY 12237
800-458-1158
Website: www.health.state.ny.us

**New York State Division of Housing and
Community Renewal (DHCR) (Chapters 2, 4,
9, 15 and 16)**

See "DHCR Fact Sheets, Policy Statements and Operational Bulletins," below, for a list of useful resources available from the DHCR.

Central Office

DHCR Office of Rent Administration
92-31 Union Hall Street, 4th Floor
Jamaica, NY 11433
718-739-6400
Website: www.dhcr.state.ny.us

New York City DHCR Offices**Lower Manhattan**

25 Beaver Street, 5th Floor
New York, NY 10004
(serving properties located on the south side of 110th Street and below)

Upper Manhattan

Adam Clayton Powell, Jr.
Office Building
163 W. 125th Street, 5th Floor
New York, NY 10027
212-961-8930
(serving properties located on the north side of 110th Street and above)

Bronx

1 Fordham Plaza, 2nd Floor
Bronx, NY 10458
718-563-5678

Brooklyn

55 Hanson Place, 7th Floor
Brooklyn, NY 11217
718-722-4778

Queens

92-31 Union Hall Street, 4th Floor
Jamaica, NY 11433
718-739-6400

Staten Island

60 Bay Street, 7th Floor
Staten Island, NY 10301
718-816-0278

New York State Regional DHCR Offices**Capital District**

Flanagan Square
547 River Street
Troy, NY 12180
518-402-7377
(serving properties located in the counties of Albany, Columbia, Delaware, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Oswego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington)

Buffalo Regional Office

Statler Towers
107 Delaware Avenue, Suite 600
Buffalo, NY 14202
716-842-2244
(serving properties located in the counties of Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming and Yates)

Nassau County Office

50 Clinton Street, 6th Floor
Hempstead, NY 11550
516-481-9494

Rockland County Office

Pascack Plaza
9 C Perlman Drive
Spring Valley, NY 10977
845-425-6575

Syracuse Regional Office

800 South Wilber Avenue
Syracuse, NY 13204
315 473-6930
Mailing address:
PO Box 1127
Syracuse, NY 13201
(serving properties in the counties of Broome, Cayuga, Chenango, Cortland, Franklin, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga and Tomkins)

Westchester County Office

75 South Broadway
White Plains, NY 10601
914-948-4434

DHCR Fact Sheets, Policy Statements and Operational Bulletins

Fact Sheets

Fact sheets describe the major elements of rent control and rent stabilization in New York City and New York State. You can order fact sheets from the DHCR's central office (92-31 Union Hall Street, 4th Floor, Jamaica, NY 11433, 718-739-6400) or download them from the DHCR website (www.dhcr.state.ny.us).

- #1 Rent Control and Rent Stabilization
- #2 Rent Stabilization Lease Rider
- #3 Required and Essential Services
- #4 Lease Renewal in Rent Stabilized Apartments
- #5 Vacancy Leases in Rent Stabilized Apartments
- #6 Fair Market Appeals
- #7 Sublets, Assignments, and Illusory Tenancies
- #8 Emergency Tenant Protection Act of 1974 (ETPA)
- #9 Security Deposits
- #10 Eviction from an Apartment Based on Owner Occupancy
- #11 Rent Increases for Major Capital Improvements (MCI)
- #12 Rent Increases for New Services, New Equipment, or Improvements to an Apartment
- #13 Fuel Cost Adjustment
- #14 Rent Reductions Due to Decreased Services
- #15 Heat and Hot Water
- #16 Collecting Overcharges in Rent Stabilized NYC Apartments
- #17 Harassment
- #18 Appealing a Rent Administrator's Order: Petition for Administrative Review
- #19 Small Building Owner's Assistance Unit
- #20 Special Rights of Disabled Persons
- #21 Special Rights of Senior Citizens
- #22 Maximum Base Rent Program (MBR) Q&A for Owners
- #23 Fuel Cost Adjustment Q&A for Owners
- #24 Major Capital Improvements (MCI) Q&A for Owners
- #25 Window Guards

#26 Guide to Rent Increase for Rent Stabilized Apartments in NYC

#27 Air Conditioners

#28 Painting Rent Controlled Apartments

#29 Conversion from Electrical Inclusion to Exclusion in Rent Regulated Apartments, State-wide

#30 Succession Rights

#31 Guide to Rent Increases for Rent-Stabilized Apartments in Nassau, Rockland and Westchester Counties

DHCR Policy Statements

Policy statements explain how the DHCR interprets various provisions of the rent stabilization and rent control laws and regulations. You can order copies of policy statements from the DHCR Infoline (718-739-6400) or download copies from the DHCR website (www.dhcr.state.ny.us).

No. 89-1 Failure to Maintain Services: Rent Reduction/Restoration

No. 89-2 Application of the Treble Damage Penalty

No. 89-3 MBR Fee Collectibility

No. 89-4 Expedited MCI

No. 89-5 MCI Rent Increases for Replacement Windows after Prior Increase Granted for Storm Windows

No. 89-6 MCI Rent Increases for Replacement of Certain Window Types

No. 89-7 Collection of Administrative Fees: Housing Accommodations Permanently Not Subject to the RSL or ETPA and Application Form

No. 89-8 Asbestos Removal as a Major Capital Improvement/Eligible Costs

No. 89-9 Sponsor Representations, in Cooperative or Condominium Offerings, to Bear Cost of MCIs: Effect on Entitlement to MCI Increases

No. 89-10 Filing Requirements Upon Vacancy of Rent Controlled Apartment

DHCR Fact Sheets, Policy Statements and Operational Bulletins

- No. 90-1 Effect of Rent Reduction Orders on Maximum Base Rent MBR Increases
- No. 90-2 Failure to Maintain Services: Rent Reduction/Restoration Revised 89-1
- No. 90-3 Room Count Determination for Major Capital Improvement MCI Application Processing
- No. 90-4 Presence of Owners and Tenants at DHCR Inspections
- No. 90-5 Arranging Repairs - No Access Inspections
- No. 90-6 MCI Eligibility/Roofing
- No. 90-7 Processing of 62-B Complaints
- No. 90-8 Failure to Maintain Services/Processing MCI Applications
- No. 90-9 Late Registration and Failure to Register: Its Effect on MCI Applications
- No. 90-10 Major Capital Improvements/Individual Apartment Improvements/Confirmation of Costs/Payments
- No. 91-1 Demolition Costs Associated With Individual Apartment Improvements
- No. 91-2 MCI Eligibility/Roofing (Revised 90-6)
- No. 91-3 Effects of Rent Reductions on Fuel Cost Passalong Adjustments
- No. 91-4 Expediting Proceedings
- No. 91-5 Limitations of Filing Requests for Reconsideration of Order Issued by Rent Administrators and/or the Commissioner
- No. 92-1 Penalties for Failure to Pay Billed Administrative Fees for New York City Rent Stabilized Accommodations for Apartments Covered by the Emergency Tenant Protection Act
- No. 92-2 Collectibility of "421-a" Rent Increases
- No. 92-3 Proof of Registration
- No. 93-1 Responsibility of a Current Owner of a Rent Stabilized Housing Accommodation to Refund Excess Rent Determined Pursuant to a Fair Market Rent Appeal

- No. 93-2 Definition of Room for Major Capital Improvements MCI Purposes
- No. 93-3 Procedures for Cases Involving 7-A Administrators Appointed by the Housing Court Pursuant to the Real Property Actions and Proceedings Law
- No. 93-4 Procedure for Handling Rent Overcharge Awards When the Tenant Has Vacated the Apartment Without Leaving a Forwarding Address
- No. 95-1 Rent Overcharge Awards When the Tenant Has Vacated the Apartment Without Leaving a Forwarding Address (Replaces 93-4)
- No. 96-1 Third-Person Certification

DHCR Operational Bulletins

Operational bulletins explain how the DHCR intends to implement various provisions of the rent stabilization and rent control laws and regulations. To get the full text of any of the operational bulletins listed below, call the DHCR Infoline (718-739-6400) and ask that a specific bulletin be mailed to you; you may also download operational bulletins from the DHCR website (www.dhcr.state.ny.us).

- No. 84-1 New Procedures for Instituting a Proceeding for Administrative Review of an Order Issued by a District Rent Administrator
- No. 84-2 Emergency Tenant Protection Act
- No. 84-4 Major Capital Improvements / Substantial Rehabilitation / Increased Services and Equipment
- No. 84-4 Supplement No. 1 to Operational Bulletin 84-4 (MCI)
- No. 84-4 Annual Update of Section B of Supplement No.1 to Operational Bulletin 84-4 (Air Conditioners '86)
- No. 84-4 Second Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '87)

DHCR Fact Sheets, Policy Statements and Operational Bulletins

No. 84-4	Third Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '88)		DHCR to Enable the Division to Serve All Affected Tenants With Copies of Such Applications 1990
No. 84-4	Fourth Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '89)	No. 90-1	Requiring Owners to Submit Sufficient Copies of Designated Applications to the DHCR to Enable the Division to Serve all Affected Tenants With Copies of Such Applications 1992
No. 84-4	Fifth Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '90)	No. 90-2	Useful Life Schedule for Major Capital Improvements
No. 84-4	Sixth Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Electrical '91)	No. 90-2	Requirement for Application and Extension of the Effective Date of the Waiver Provision of the Useful Life Schedule Addendum
No. 84-4	Seventh Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '92)	No. 91-2	Penalties for Failure to Pay Billed Administrative Fees for New York City Rent Stabilized Accommodations or for Apartments Covered by the Emergency Tenant Protection Act
No. 84-4	Eighth Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Electrical '93)	No. 92-1	Owner's Notice to New Tenant of Legal Regulated Rent for a Vacant Housing Accommodation Previously Regulated Under the Emergency Tenant Protection Act and Regulations
No. 84-4	Ninth Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '94)	No. 92-2	Extension of Filing Deadline for PARs and Fuel Cost Reports Due on May 1, 1993
No. 84-4	Tenth Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '95)	No. 93-1	Procedures for the Implementation of the Freedom of Information Law FOIL and Procedures for Responding to Subpoenas Duces Tecum for Files and Records
No. 84-4	Eleventh Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4 (Air Conditioners '96)	No. 95-1	Collectibility of MCI/OI Increases where the Rent is Reduced Because of Diminution of Services
No. 85-1	Rent Stabilization Rider for Apartment House Tenants in New York City	No. 95-2	Substantial Rehabilitation
No. 85-2	Rent Increases for Rent Stabilized Housing Accommodations Based Upon Owner Hardship—Guidelines and Procedures	No. 95-3	Implementing the Rent Regulation Reform Act of 1993 and NYC Local Law 1994, No. 4 (Replaces 94-1)
No. 86-1	Summary of Guideline Rates of Maximum Rent Increases Filed by County and New York City Rent Guidelines Boards for Leases Commencing Between October 1, 1985, and September 30, 1986	No. 96-1	Procedures Pursuant to the Rent Stabilization Code for the Filing of an Owner's Application to Refuse to Renew Leases on the Grounds of Demolition
No. 87-1	1987 Fuel Cost Adjustment for New York City Rent Controlled Apartments		
No. 90-1	Requiring Owners to Submit Sufficient Copies of Designated Applications to the		

**New York State Department of State
(Chapter 1)****Division of Licensing Services**

84 Holland Avenue
Albany, NY 12208-3490
518-474-4429
Website: www.dos.state.ny.us

**New York State Department of Insurance
(Chapter 2)****NYS Insurance Department Consumer Services Bureau**

25 Beaver Street
New York, NY 10004
800-342-3736

Manhattan

Website: www.ins.state.ny.us

**New York State Department of Taxation and
Finance (DTF) (Chapter 4)****DTF Taxpayer Assistance Bureau**

W.A. Harriman Campus
Albany, NY 12227
800-225-5829
Website: www.tax.state.ny.us

**New York State Division of Criminal Justice
Services (Chapters 1 and 6)**

4 Tower Place
Albany, NY 12203-3764
900-288-3838 (sex offender registry information)
Website: www.criminaljustice.state.ny.us

**New York State Department of
Transportation (DOT) (Chapter 6)****Carrier Certification and Compliance Bureau****New York City Office**

Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
718-482-4815

Albany Office

State Campus Building 7A, Fourth Floor
Albany, NY 12232
518-457-7194
Website: www.dot.state.ny.us

**New York State Division of Human Rights
(Chapters 1 & 11)****Headquarters**

One Fordham Plaza, 4th Floor
Bronx, NY 10458
718-741-8400
Website: www.nysdhr.com

Albany

Empire State Plaza, Agency Building #2, 18th Floor
Albany, NY 12220
518-474-2705

Binghamton

44 Hawley Street, Room 603
Binghamton, NY 13901
607-721-8467

Brooklyn

55 Hanson Place, Room 304
Brooklyn, NY 11217
718-722-2856

Buffalo

The Walter J. Mahoney State Office Building
65 Court Street, Suite 506
Buffalo, NY 14202
716-847-7632

Manhattan

20 Exchange Place, 2nd Floor
New York, NY 10005
212-480-2522

Adam Clayton Powell State Office Building
163 West 125th Street, 4th Floor
New York, NY 10027
212-961-8650

Long Island

175 Fulton Avenue
Hempstead, NY 11550
516-538-1360

State Office Building, Veterans Memorial Building

Hauppauge, NY 11787
516-952-6434

Rochester

One Monroe Square
259 Monroe Avenue, 3rd Floor
Rochester, NY 14607
716-238-8250

Syracuse

333 E. Washington Street, Room 401
Syracuse, NY 13202
315-428-4633

Peekskill

8 John Walsh Boulevard, Suite 204
Peekskill, NY 10566
914-788-8050

**New York State Public Service Commission
(Chapter 6)****Consumer Services Division**

3 Empire State Plaza
Albany, NY 12223
800-342-3377
Website: www.dps.state.ny.us

E. New York City Government Agencies**New York City Department of Housing
Preservation and Development (HPD)
(Chapters 2, 4 and 9)****Headquarters**

100 Gold Street, Room 1G-3
New York, NY 10038
212-863-5876
Website: www.nyc.gov/html/hpd

**New York City Commission on Human Rights
(Chapter 11)****Community Service Centers****Manhattan and Staten Island**

40 Rector Street, 10th Floor
New York, NY 10006
212-306-5070
Website: www.ci.nyc.ny.us/html/cchr/home.html

Brooklyn

1368 Fulton Street, 3rd Floor
Brooklyn, NY 11216
718-230-3600
275 Livingston Street, 2nd Floor
Brooklyn, NY 11217
718-722-3130

Bronx

1932 Arthur Avenue, 2nd Floor
Bronx, NY 10457
718-579-6900
4101 White Plains Road
Bronx, NY 10466
718-579-6900

Queens

136-56 39th Avenue, 3rd Floor
Flushing, NY 11354
718-886-6162
89-31 161 Street, Room 210
Jamaica, NY 11432
718-657-9333

**New York City Department of Aging
(Chapter 4)**

2 Lafayette Street
New York, NY 10007
212-442-1000
Website: www.ci.nyc.us/dfta

**New York City Department of Buildings
(Chapter 9)**

60 Hudson Street
New York, NY 10010
212-240-7000
Website: www.ci.nyc.ny.us/dob

**New York City Department of Environmental
Protection (Chapters 10 and 11)**

96-05 Horace Harding Expressway
Corona, New York
718-337-4357
718-595-3730 (asbestos and lead control, including
regulations and forms)
Website: www.ci.nyc.ny.us/dep

New York City Department of Finance (Chapter 4)

25 Elm Place
Brooklyn, NY 11201
718-935-6000
Website: www.ci.nyc.ny.us/finance

New York City Department of Health (Chapter 11)

125 Worth Street
New York, NY 10013
212-442-9666 (general number)
212-BAN-LEAD (lead abatement information)
Website: www.ci.nyc.ny.us/doh

F. New York City Housing Court Branches (Chapters 15 and 16)

Manhattan (New York City Civil Court, New York County)

111 Centre Street (between Lafayette & Franklin Streets)
New York, NY 10013
Clerk's Office: 212-374-8416
Hours: Monday, Tuesday, Wednesday and Friday: 8:00
a.m. to 5:00 p.m.; Thursdays: 8:00 a.m. to 7:00 p.m.

Brooklyn (New York City Civil Court, Kings County)

141 Livingston Street (corner of Smith Street)
Brooklyn, NY 11201
Clerk's Office: 718-643-7529
Hours: Monday, Tuesday, Wednesday and Friday: 8:00
a.m. to 5:00 p.m.; Thursdays: 8:00 a.m. to 7:00 p.m.

Bronx (New York City Civil Court, Bronx County)

1118 Grand Concourse (at 166th Street)
Bronx, NY 10451
Clerk's Office: 718-466-3025
Hours: Monday, Tuesday, Wednesday and Friday: 8:00
a.m. to 5:00 p.m.; Thursdays: 8:00 a.m. to 7:00 p.m.

Queens (New York City Civil Court, Queens County)

89-17 Sutphin Boulevard (at 89th Avenue)
Jamaica, NY 11435
Clerk's office: 718-262-7145
Hours: Monday, Tuesday, Wednesday and Friday: 9:00
a.m. to 5:00 p.m.; Thursdays: 8:00 a.m. to 7:00 p.m.

Staten Island (New York City Civil Court, Richmond County)

927 Castleton Avenue (corner of Bement Avenue)
Staten Island, NY 10310
Clerk's Office: 718-390-5420
Hours: Monday, Tuesday, Wednesday and Friday: 9:00
a.m. to 5:00 p.m.; Thursdays: 8:00 a.m. to 7:00 p.m.

Harlem Community Justice Center: Housing Court

170 East 121st Street
New York, NY 10035
Court telephone: 212-360-4100
Call for hours of operation.

Red Hook (Brooklyn) Community Justice Center: Housing Court

88 Visitation Place
Brooklyn, NY 11231
718-923-8204

G. New York City Small Claims Court Branches (Chapter 18)

General Information: 212-791-6000

Bronx

851 Grand Concourse, Basement
Bronx, NY 10451
Clerk's Office: 718-590-2693
Clerk's hours: Monday through Friday 9:00 a.m. to
4:30 p.m. Thursday evening: 5:30 p.m.-8:00 p.m.
(Court convenes Rm. B129: 6:00 p.m.-12 midnight,
Monday through Thursday).

Kings County (Brooklyn)

141 Livingston Street, Room 201
Brooklyn, NY 11201
718-643-7913
Clerk's hours: Monday through Friday 9:00 a.m. to
4:30 p.m.; Thursday evening: 5:30 p.m. to 7:30 p.m.

New York County (Manhattan)

111 Centre Street
New York, NY 10013
212-374-5776
Clerk's hours: Monday through Friday: 9:00 a.m. to
4:30 p.m.; Thursday evenings 4:40 p.m. to 8:00 p.m.

Queens County

89-17 Supthin Boulevard

Jamaica, NY 11435

718-262-7135

Clerk's hours: Monday through Friday 9:00 a.m. to 5 p.m.; Thursday evening: 6:00 p.m. to 9:00 p.m.

Richmond County (Staten Island)

927 Castleton Avenue

Staten Island, NY 10310

718-390-5421

Clerk's hours: Monday through Friday 9:00 a.m. to 5 p.m.; Thursday evening: 5:30 p.m. to 8:00 p.m.

H. Dispute Resolution Centers (Chapter 18)

Headquarters**New York State Unified Court System, Division of
Court Operations**

Office of Alternative Dispute Resolution Programs

98 Niver Street

Cohoes, NY 12047

518-238-2888

Albany County**Mediation Matters, Inc.**

Albany County Office (Main Office)

30 Watervliet Avenue

Albany, NY 12206

518-446-0356

Allegany County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center of Allegany County

112 West State Street

Olean, NY 14760

716-373-5133

Website: www.upstateny.bbb.org/complaints

Bronx County**Institute for Mediation and Conflict Resolution, Inc.**

Bronx Community Dispute Resolution Center

384 East 149th Street, Suite 330

Bronx, NY 10455

718-585-1190

Broome County**ACCORD, A Center for Dispute Resolution, Inc.**

Broome County Office (Main Office)

30 West State Street, 2nd Floor

Colonial Plaza

Binghamton, NY 14760

607-724-5153

Cattaraugus County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center of Cattaraugus County

112 West State Street

Olean, NY 14760

716-373-5133

Website: www.upstateny.bbb.org/complaints

Cayuga County**Center for Dispute Settlement, Inc.**

Cayuga County CDS

95 Genesee Street, 2nd Floor

Auburn, NY 13021

315-252-4260

Website: www.cdsadr.org

Chautauqua County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center of Chautauqua County—

Dunkirk

323 Central Avenue, 4th Floor

Dunkirk, NY 14048

716-366-0410

Website: www.upstateny.bbb.org/complaints

Chautauqua County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center of Chautauqua County—

Jamestown

Chautauqua Co. Municipal Bldg.

200 East Third Street, 2nd Floor

Jamestown, NY 14701

716-483-7774

Website: www.upstateny.bbb.org/complaints

Chemung County**Community Dispute Resolution Center, Inc.**

Chemung County Office
215 East Church Street, Suite 204
Elmira, NY 14901
607-734-9087

Chenango County**Catholic Charities of Delaware and Otsego Counties, Inc.**

Dispute Resolution Center
Eaton Center
26 Conkey Avenue
Norwich, NY 13815
607-336-1982

Clinton County**Northern New York Centers for Conflict Resolution, Inc.**

Clinton County Community DR Program
Federal Building
23 Brinkerhoff Street, B-1
Plattsburgh, NY 12901
518-563-1227

Columbia County**Common Ground Dispute Resolution, Inc.**

Columbia County Office
454 Warren Street
Hudson, NY 12534
518-828-0047

Cortland County**New Justice Conflict Resolution Services, Inc.**

Cortland County Office
McNeil Building
17-29 Main Street, Suite 412
Cortland, NY 13045
607-753-6952

Delaware County**Catholic Charities of Delaware and Otsego Counties, Inc.**

Dispute Resolution Center
Sherwood Road
PO Box 7
Delhi, NY 13753
607-746-6351

Dutchess County**Mediation Center of Dutchess County, Inc.**

Community Mediation Program
Family Partnership Building
29 North Hamilton Street
Poughkeepsie, NY 12601
845-471-7213
Website: www.dutchessmediation.org

Erie County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center, Main Office
741 Delaware Avenue, Suite 100
Buffalo, NY 14209
Website: www.upstateny.bbb.org/complaints

Essex County**Northern New York Centers for Conflict Resolution, Inc.**

Essex County Community DR Program (Main Office)
301 Main Street
PO Box 135
Lake Placid, NY 12946
518-523-7234

Franklin County**Northern New York Centers for Conflict Resolution, Inc.**

Franklin County Community DR Program
9 Finney Boulevard
Malone, NY 12953
518-483-1550

Fulton County**Catholic Charities of Montgomery County, Inc.**

Tri-County Mediation Center
Served by Amsterdam Office
(See Montgomery County)
518-842-4202

Genesee County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center of Genesee County
Genesee County Courts Facility
One West Main
Batavia, NY 14020
716-344-2550
Website: www.upstateny.bbb.org/complaints

Greene County**Common Ground Dispute Resolution, Inc.**

Greene County Office
11 William Street, Suite 2
Catskill, NY 12414
518-943-0523

Hamilton County**Northern New York Centers for Conflict Resolution, Inc.**

Hamilton County Community DR Program
Elm Lake Rd.
PO Box 471
Speculator, NY 12164
518-548-8213

Herkimer County**Catholic Charities of Herkimer County, Inc.**

Herkimer County Community Mediation Program
61 West Street
Ilion, NY 13357
315-894-9917

Jefferson County**Jeff-Lewis Mediation Center, Inc.**

Jefferson County Office
7 Empsall Plaza Courtyard
Watertown, NY 13601
315-785-0333
Website: www.jefflewismediation.org

Kings County**Safe Horizon, Inc.**

Brooklyn Mediation Center
210 Joralemon Street, Room 618
Brooklyn, NY 11201
718-834-6671
Website: www.safehorizon.org

Lewis County**Jeff-Lewis Mediation Center, Inc.**

Lewis County Office
5420 Shady Avenue
Lowville, NY 13367
315-376-7991
Website: www.jefflewismediation.org

Livingston County**Center for Dispute Settlement, Inc.**

Livingston County CDS
6 Court Street
Geneseo, NY 14454
716-243-7007
Website: www.cdsadr.org

Madison County**New Justice Conflict Resolution Services, Inc.**

Madison County Office
121 Oneida Street
PO Box 365
Oneida, NY 13421
315-361-4438

Monroe County**Center for Dispute Settlement, Inc.**

300 State Street, Suite 301
Rochester, NY 14614
716-546-5110
Website: www.cdsadr.org

Montgomery County**Catholic Charities of Montgomery County, Inc.**

Tri-County Mediation Center
1 Kimball Street
Amsterdam, NY 12010
518-842-4202

Nassau County**EAC, Inc., Mediation Alternative Project**

50 Clinton Street, Suite 102
Hempstead, NY 11550
516-489-7733
Website: www.eacinc.org/community.htm

New York County (Manhattan)**Safe Horizon, Inc., Manhattan Mediation Center**

346 Broadway, Suite 400W
New York, NY 10013
212-577-1740
Website: www.safehorizon.org

Washington Heights-Inwood Coalition, Inc.

Northern Manhattan Mediation Program
652 West 187th Street
New York, NY 10033
212-781-6722

Lesbian, Gay, Bisexual & Transgender Community Center, Inc.

Center Mediation Services/Project Resolve
208 West 13th Street
New York, NY 10014
212-620-7310
Website: www.gaycenter.org/programs/mhss/mediation.html

Niagara County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center of Niagara County
1721 Military Road
Niagara Falls, NY 14304
716-297-3083
Website: www.upstateny.bbb.org/complaints

Oneida County**Peacemaker Program, Inc.**

Oneida County Community Mediation Program
1417 Genesee Street, 2nd Floor
Utica, NY 13502
315-724-1718
E-mail: Stephen@peacemakerprogram.co
Website: www.peacemakerprogram.com

Onondaga County**New Justice Conflict Resolution Services, Inc.**

Onondaga County Office (Main Office)
1153 West Fayette Street
Syracuse, NY 13204
315-471-4676

Ontario County**Center for Dispute Settlement, Inc.**

Ontario County CDS
120 North Main Street
Canandaigua, NY 14424
585-396-0840
Website: www.cdsadr.org

Orange County**Dispute Resolution Center of Orange and Putnam Counties, Inc.**

Orange County Office (Main Office)
14 Scotchtown Road
PO Box 510
Goshen, NY 10924
845-294-8082

Orleans County**Better Business Bureau Foundation, Inc.**

741 Delaware Avenue
Buffalo, NY 14209
716-883-5050
Website: www.upstateny.bbb.org/complaints

Oswego County**New Justice Conflict Resolution Services, Inc.**

Oswego County Office
Public Safety Center
39 Churchill Rd.
Oswego, NY 13126
315-345-9009

Otsego County**Mediation Services, Inc.**

Dispute Resolution and Conflict Management
48 Dietz Street
Suite I-Front
Oneonta, NY 13820
607-433-1672

Putnam County**Dispute Resolution Center of Orange and Putnam Counties, Inc.**

51 Brewster Ave
Carmel, NY 10512
845-225-9555

Queens County**Community Mediation Services, Inc.**

Queens Mediation Network
89-64 163rd Street
Jamaica, NY 11432
718-523-6868

Community Mediation Services, Inc.

Queens Mediation Network: Fresh Meadows Satellite
Beacon Center at JHS 216
64-20 175th Street
Flushing, NY 11365
718-445-6931

Rensselaer County**Mediation Matters, Inc.**

Rensselaer County Office
258 Broadway
Troy, NY 12180
518-687-0056

Richmond County**New York Center for Interpersonal Development, Inc.**

Staten Island Community Dispute Resolution Center
130 Stuyvesant Place, 5th Floor
Staten Island, NY 10301
718-815-4557

Rockland County**Volunteer Counseling Services, Inc.**

Center for Conflict Resolution
77 South Main Street
New City, NY 10956
845-634-5729
Website: www.planet-rockland.org/vcs

St. Lawrence County**Northern New York Centers for Conflict Resolution, Inc.**

St. Lawrence County Community DR Program
127 North Water Street
Ogdensburg, NY 13669
315-393-7079

Saratoga County**Catholic Charities of Saratoga, Warren and Washington Counties, Inc.**

Mediation Services of Saratoga, Warren & Washington Counties
480 Broadway, LL-32
Saratoga Springs, NY 12866
518-584-6361

Schenectady County**Law, Order and Justice Center, Inc.**

Dispute Resolution Program
144 Barrett Street
Schenectady, NY 12305
518-346-1281

Schoharie County**Catholic Charities of Montgomery County, Inc.**

Tri-County Mediation Center
795 East Main Street, Suite 5
Cobleskill, NY 12043
518-234-2568

Schuyler County**Community Dispute Resolution Center, Inc.**

Schuyler County Office
208 Broadway
Montour Falls, NY 14865
607-535-7637

Seneca County**Center for Dispute Settlement, Inc.**

Seneca County CDS
48 West Williams Street
Waterloo, NY 13165
315 539-4570

Steuben County**Center for Dispute Settlement, Inc.**

Hornell Satellite
82 Main Street
Hornell, NY 14843
607-324-9887
Website: www.cdsadr.org

Steuben County**Center for Dispute Settlement, Inc. Bath Satellite**

22 Liberty Street, 2nd Floor
Bath, NY 14810
607-776-6976

Suffolk County**EAC, Inc., Community Mediation Center**

22 Lawrence Avenue
Smithtown, NY 11788
631-265-0490
Website: www.eacinc.org/community.htm

Sullivan County**Dispute Resolution Center of Orange and Putnam Counties, Inc.**

Sullivan County Office
14 Street John Steet
PO Box 786
Monticello, NY 12701
845-794-3377

Tioga County**ACCORD, A Center for Dispute Resolution, Inc.**

Tioga County Office
16 Court Street, 2nd Floor
PO Box 493
Owego, NY 13827
607 687-8222

Tomkins County**Community Dispute Resolution Center, Inc.**

Tompkins County Office (Main Office)
120 West State Street
Ithaca, NY 14850
607-273-9347

Ulster County**Dispute Resolution Center of Orange and Putnam Counties, Inc.**

Ulster County Office (Main Office)
25 Lucas Avenue, 2nd Floor
Kingston, NY 12401
845-331-6136

Warren County**Catholic Charities of Saratoga, Warren and Washington Counties, Inc.
Mediation Services of Saratoga, Warren & Washington Counties**

35 Broad St
Glens Falls, NY 12801
518-793-6212

Washington County**Catholic Charities of Saratoga, Warren and Washington Counties, Inc.
Mediation Services of Saratoga, Warren & Washington Counties**

35 Broad St
Glens Falls, NY 12801
518-793-6212

Wayne County**Center for Dispute Settlement, Inc.**

Wayne County CDS (Community Program)
54 Broad Street, Room 304
Hall of Justice
Lyons, NY 14489
315-946-5451
Website: www.cdsadr.org

Center for Dispute Settlement, Inc.

Wayne County CDS (Family Program)
54 Broad Street, Room 113
Hall of Justice
Lyons, NY 14489
315-946-5451
Website: www.cdsadr.org

Westchester County**CLUSTER, Inc.**

Westchester Mediation Center
20 South Broadway, Suite 501
PO Box 1248
Yonkers, NY 10702
914-963-6500

Wyoming County**Better Business Bureau Foundation, Inc.**

Dispute Settlement Center of Wyoming County
112 West State Street
Olean, NY 14760
716 373-5133
Website: www.upstateny.bbb.org/complaints

Yates County**Center for Dispute Settlement, Inc.**

Yates County CDS
1 Keuka Business Park
Penn Yann, NY 14527
315-531-8413
Website: www.cdsadr.org

I. Community Legal Services Programs in New York (Chapter 19)

Statewide Referral Information

New York State Bar Association

Elk Street

Albany, NY 12207

518-463-3200

Website: www.nysba.org (Click public resources, then legal resources by county)

New York City

Legal Services for New York City

350 Broadway, 6th Floor

New York, NY 10013-9998

212-431-7200

Website: www.lsnycbb.org

Legal Aid Society

The Legal Aid Society headquarters at 90 Church Street was forced to close after the World Trade Center disaster. Headquarters have been temporarily relocated to:

166 Montague Street

Brooklyn, NY 11201

718-722-3100

Website: www.legal-aid.org

Brooklyn Legal Services Corporation “B”

105 Court Street

Brooklyn, NY 11201

718-237-5500

Website: www.lsnycbb.org

Bronx Legal Services

Courtlandt Avenue Office

579 Courtlandt Avenue

Bronx, NY 10451

718-993-6250

Website: www.bronxlegalservices.org

MFY Legal Services, Inc.

299 Broadway

New York, NY 10706

212-417-3766

Website: www.mfy.org

Outside New York City

Albany & Capitol District

Legal Aid Society of Northeastern New York, Inc.

55 Columbia Street

Albany, NY 12207

800-462-2922

Broome and Chenango Counties

Legal Aid for Broome and Chenango

30 Fayette Street

PO Box 2011

Binghamton, NY 13902-2011

607-723-7966

Buffalo

Neighborhood Legal Services, Inc.

Ellicott Square Building

295 Main Street, Room 495

Buffalo, NY 14203-2473

716-847-0650

Website: www.nls.org

Central New York State

Legal Services of Central New York, Inc.

472 South Salina Street, # 300

Syracuse, NY 13202

315-475-3127

Website: www.law.syr.edu/LSCNY

Chemung County

Chemung County Neighborhood Legal Services, Inc.

215 E. Church Street, Suite 301

Elmira, NY 14901-2889

607-734-1647

Livingston, Ontario, Seneca, Wayne and Yates Counties

Legal Assistance of the Finger Lakes

One Franklin Square

PO Box 487

Geneva, NY 11456

315-781-1465

Website: www.lafl.org

Long Island**Nassau/Suffolk Law Services Committee, Inc.**

One Helen Keller Way, 5th Floor
Hempstead, NY 11550
516-292-8100

Rockland County**Legal Aid Society of Rockland County, Inc.**

2 Congers Road
New City, NY 10956-0314
845-634-3627

Monroe County**Monroe County Legal Assistance Corporation**

80 St. Paul Street, Suite 700
Rochester, NY 14604-1350
716-325-2520

Utica**Legal Aid Society of Mid-New York, Inc.**

255 Genesee Street, 2nd Floor
Utica, NY 13501-3405
315-732-2131

Niagra County**Niagara County Legal Aid Society, Inc.**

775 Third Street
PO Box 844
Niagara Falls, NY 14302-0844
716-284-8831

North County**North Country Legal Services, Inc.**

100 Court Street
PO Box 989
Plattsburgh, NY 12901-0989
800-722-7380

Southern Tier**Southern Tier Legal Services**

104 East Steuben Street
Bath, NY 14810
877-776-4126

Westchester/Putnam Counties**Westchester/Putnam Legal Services, Inc.**

4 Cromwell Place
White Plains, NY 10601
914-949-1305

J. Volunteer Lawyer Projects in New York (Chapter 19)**New York City**

The New York City Housing Court operates a Volunteer Lawyers Project. For more information, speak to the Housing Court Clerk in the County in which you live. Section F, above, lists the addresses and phone numbers for the Housing Court in all counties.

Albany County**Albany County Bar Association Pro Bono Program**

Albany County Courthouse
3rd Floor, Room 315
Albany, NY 1225
518-445-7691
Website: www.albanycountybar.com

Buffalo**Bar Association of Erie County Volunteer Lawyers Project, Inc.**

700 Statler Towers
Buffalo, NY 14202
716-847-0662

Munroe County**Volunteer Legal Services Project**

Suite 640
Rochester, NY 14604
716-232-3051
Website: www.vlsprochester.org

Westchester/Putnam**Westchester/Putnam Volunteer Legal Services**

4 Cromwell Place
White Plains, NY 10601
914-949-1305; Fax: 914-949-6213

Suffolk County**Suffolk County Pro Bono Project**

1757 Veterans Highway, Suite 50
Islandia, NY 11722
516-232-2400

Nassau County**Nassau County Volunteer Lawyers Project**

One Helen Keller Way
Hempstead, NY 11550
516-292-8299

Central New York**Legal Services of Central New York, Inc.**

Pro Bono Program
Main Office: 472 South Salina Street
Suite 300
Syracuse, NY 13202
315-475-3127

K. Bar Associations and Lawyer Referral Services

Here is a list of 22 bar associations which offer lawyer referral services, the area each serves and whether or not the service meets American Bar Association (ABA) standards. Lawyer referral services that meet ABA standards only refer attorneys who are licensed to practice in New York, maintain adequate malpractice insurance or alternatively, have provided proof of financial responsibility, and are experienced in the area of law for which they are being referred.

New York State Bar Association Lawyer Referral and Information Service

Albany, NY
800-342-3661
518-487-5909
Serves all counties throughout the state
Meets ABA standards

Albany County Bar Association Lawyer Referral Program

Albany, NY
518-445-7691
Serves Albany County
Meets ABA standards

Association of the Bar of the City of New York Legal Referral Service

New York, NY
212-626-7373
212-626-7374 (Spanish)
Serves New York City
Meets ABA standards

Capital District Women's Bar Association

Albany, NY
518-438-5511
Serves Albany, Schenectady and Troy Counties
Does not meet ABA standards

Bronx County Bar Association Lawyer Referral Service

Bronx, NY
718-293-5600
Serves Bronx County
Does not meet ABA standards

Brooklyn Bar Association Lawyer Referral Service

Brooklyn, NY
718-624-0843
Serves New York City
Does not meet ABA standards

Broome County Bar Association Lawyer Reference Service

Binghamton, NY
607-723-6331
Serves Broome County
Does not meet ABA standards

Chemung County Lawyer Referral Service

Elmira, NY
607-734-9687
Serves Chemung County
Does not meet ABA standards

Dutchess County Bar Association Lawyer Referral Service

Poughkeepsie, NY
914-473-7941
Serves Dutchess County
Does not meet ABA standards

Erie County Bar Association

Buffalo NY
716-852-3100
Serves Erie County
Meets ABA standards

Nassau County Bar Association Lawyer Referral Information Service

Mineola, NY
516-747-4832
Serves Nassau County
Does not meet ABA standards

Monroe County Bar Association

Rochester, NY
716-546-2130
Serves Monroe, Orleans, Genesee, Stueben, Wayne, Wyoming and Livingston Counties
Meets ABA standards

Niagara Falls Bar Association

Niagara Falls, NY
716-284-4101
Serves Niagara County
Does not meet ABA standards

Onondaga County Bar Association Referral Service

Syracuse NY
315-471-2690
Serves Onondaga County
Meets ABA standards

Orange County Bar Association

Goshen, NY
914-294-8222
Serves Orange County
Does not meet ABA standards

Putnam County Bar Association Lawyer Referral Service

Carmel, NY
914-225-4904
Serves Putnam, Dutchess and Westchester Counties
Does not meet ABA standards

Queens County Bar Association Lawyer Referral Service

Jamaica, NY
718-291-4500
Serves New York City
Does not meet ABA standards

Richmond County Bar Association

Staten Island, NY
718-442-4500
Serves Richmond County
Does not meet ABA standards

Rockland County Bar Association Lawyer Referral Service

New City, NY
845-634-2149
Serves Rockland County
Does not meet ABA standards

Suffolk County Bar Association Lawyer Referral Service

Hauppauge, NY
516-234-5577
Serves Suffolk County
Does not meet ABA standards

Warren County Bar Association Lawyer Referral Service

Glens Falls, NY
518-792-9239
Serves Warren, Washington, Saratoga and Essex Counties
Does not meet ABA standards

Westchester County Bar Association Lawyer Referral Service

White Plains, NY
914-761-5151
Serves Westchester County
Does not meet ABA standards

L. Attorney Grievance Committees in New York (Chapter 19)

For lawyers with offices in the counties of New York and Bronx:

Departmental Disciplinary Committee

61 Broadway, 2nd Floor
New York, NY 10006
212-401-0800

For lawyers with offices in the counties of Kings, Richmond, Queens:

Attorney Grievance Committee

Renaissance Plaza
335 Adams Street, Suite 2400
Brooklyn, NY 11201
718-923-6300

For lawyers with offices in the counties of Nassau and Suffolk:**Attorney Grievance Committee**

6900 Jericho Turnpike

Syosset, NY 11791

516-364-7344

For lawyers with offices in the counties of Dutchess, Orange, Putnam, Rockland, Westchester:**Attorney Grievance Committee**

399 Knollwood Road, Suite 200

White Plains, NY 10603

914-949-4540

For lawyers with offices in the counties of Albany, Broome, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington:**Committee on Professional Standards**

40 Steuben Street, Suite 502

Albany, NY 12207-2109

518-474-8816

For lawyers with offices in the counties of Herkimer, Jefferson, Lewis, Oneida, Onondaga, Oswego:**Attorney Grievance Committee**

465 So. Salina Street, Suite 106

Syracuse, NY 13202

315-471-1835

For lawyers with offices in the counties of Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, Yates:**Attorney Grievance Committee**

50 East Avenue, Suite 404

Rochester, NY 14604-2206

585-530-3180

For lawyers with offices in the counties of Allegany, Cattaraugus, Chataqua, Erie, Genesee, Niagara, Orleans, Wyoming:**Attorney Grievance Committee**

295 Main Street, Room 106

Buffalo, NY 14203-2560

716-858-1190

M. Social Services**New York State Office of Temporary & Disability Assistance****Headquarters:**

40 North Pearl Street

Albany, NY 12243

Hotline: 800-342-3009

Website: www.otda.state.ny.us (click "Community Resource Guide")

This office helps residents statewide apply for and obtain benefits from a variety of federal, state and local social assistance programs, depending on individual needs and eligibility. Programs include: Food Stamps, Family Assistance, Food Assistance, Medicaid, Medicare, Family Shelter Assistance, Safety Net Assistance, Section 8 Vouchers, Public Housing, Home Energy Assistance Program (HEAP), Social Security Benefits (SSI; Retirement, Survivors or Disability Income), and Refugee/Immigration Services.

Since 1996, New York welfare reforms have imposed two time limits on Temporary Assistance. There is a 60-month lifetime limit for federally-funded Family Assistance. Each month that a person receives some cash assistance that is not emergency assistance counts toward her lifetime limit. If you are no longer eligible for federal Family Assistance, you may be eligible for state and locally funded Safety Net programs, which make direct payments to landlords, utility companies and fuel vendors.

Single individuals and childless couples are not eligible for Family Assistance but are eligible for cash Safety Net assistance for 24 months.

For more information or to obtain an application, call the hotline above or visit the agency's website. ■



Sample DHCR and Other Government Forms

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards	B/3
New York City Department of Health Window Guard Notice	B/4
DHCR Rent Stabilization Lease Rider	B/5
New York City Lease/Commencement Lead Hazard Notice	B/13
New York City Annual Lead Hazard Notice	B/14
A Guide to New York City Local Law 38 of 1999	B/15
DHCR Renewal Lease Form	B/21

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**Lead Warning Statement**

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

WINDOWS GUARDS REQUIRED

LEASE NOTICE TO TENANT

You are required by law to have window guards installed if a child 10 years of age or younger lives in your apartment.

Your Landlord is required by law to install window guards in your apartment:

- if you ask him to put in window guards at any time (you need not give a reason)

OR

- if a child 10 years of age or younger lives in your apartment.

It is a violation of law to refuse, interfere with installation, or remove window guards where required.

CHECK ONE

☐ CHILDREN 10 YEARS OF AGE
OR YOUNGER LIVE IN MY APARTMENT

☐ NO CHILDREN 10 YEARS OF AGE OR
YOUNGER LIVE IN MY APARTMENT

☐ I WANT WINDOW GUARDS EVEN
THOUGH I HAVE NO CHILDREN
10 YEARS OF AGE OR YOUNGER

TENANT (PRINT)

TENANT SIGNATURE

FOR FURTHER INFORMATION CALL:

Window Falls Prevention Program
New York City Department of Health
2 Lafayette Street, 20th Floor
New York, NY 10007
(212) 676-2137



State of New York
 Division of Housing and Community Renewal
 Office of Rent Administration
 Gertz Plaza
 92-31 Union Hall Street
 Jamaica, New York 11433
 Web Site: www.dhcr.state.ny.us
 Email address: dhcrinfo@dhcr.state.ny.us

Revision Date: April 2001

**Rent Stabilization Lease Rider For Apartment House Tenants
 Residing In New York City**

**FAILURE BY AN OWNER TO ATTACH A COPY OF THIS RIDER TO THE TENANT'S
 LEASE WITHOUT CAUSE MAY RESULT IN A FINE OR OTHER SANCTIONS**

NOTICE

This Rider, with this Notice, must be attached to all vacancy and renewal leases for rent stabilized apartments. This Rider was prepared pursuant to Section 26-511(d) of the New York City Rent Stabilization Law.

This Rider must be in a print size larger than the print size of the lease to which the Rider is attached. The following language must appear in bold print upon the face of each lease : **"ATTACHED RIDER SETS FORTH RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS UNDER THE RENT STABILIZATION LAW."** ("Los Derechos Y Responsabilidades de Inquilinos Y Caseros Están Disponible en Español".)

INTRODUCTION:

This Rider is issued by the New York State Division of Housing and Community Renewal ("DHCR"), pursuant to the Rent Stabilization Law ("RSL"), and Rent Stabilization Code ("Code"). It generally informs tenants and owners about their basic rights and responsibilities under the RSL.

This Rider does not contain every rule applicable to rent stabilized apartments. It is only informational and its provisions are not part of and do not modify the lease. However, it must be attached as an addendum to the lease. It does not replace or modify the RSL, the Code, any order of DHCR, or any order of the New York City Rent Guidelines Board.

The Appendix lists organizations which can provide assistance to tenants and owners who have inquiries, complaints or requests relating to subjects covered in this Rider.

Tenants should keep a copy of this Rider and of any lease they sign.

PROVISIONS

1. GUIDELINES INCREASES FOR RENEWAL LEASES:

The owner is entitled to increase the rent when a tenant renews a lease (a "renewal lease"). Each year, effective October 1, the New York City Rent Guidelines Board sets the percentage of maximum permissible increase over the immediately preceding September 30th rent for leases which will begin during the year for which the guidelines order is in effect. The date a lease starts determines which guidelines order applies.

Guidelines orders provide increases for Renewal Leases. The renewing tenant has the choice of the length of the lease. Different percentages are set for rent increases for leases of 1 or 2 years. The guidelines order may incorporate additional provisions, such as a supplementary low-rent adjustment. For additional information see DHCR Fact Sheet #26.

2. VACANCY INCREASES FOR VACANCY LEASES

The owner is entitled to increase the prior legal regulated rent when a new tenant enters into a lease ("vacancy lease"). The legal regulated rent immediately preceding the vacancy may be increased by statutory vacancy increases as follows:

If the vacancy lease is for a term of 2 years, 20% of the prior legal regulated rent; or if the vacancy lease is for a term of 1 year, the increase shall be 20% of the prior legal regulated rent less an amount equal to the difference between:

- a) The 2 year renewal lease guideline promulgated by the New York City Rent Guidelines Board ("RGB") applied to the prior legal regulated rent and
- b) The 1 year renewal lease guideline promulgated by the RGB applied to the prior legal regulated rent.

Additional increases are available to owners where the legal regulated rent was last increased by a vacancy allowance eight or more years prior to the entering into of the subject vacancy lease or if no vacancy allowance has been taken, the number of years that the apartment has been subject to stabilization. Generally, this increase equals 0.6%, multiplied by the prior legal regulated rent, multiplied by the number of years since the last vacancy increase.

If the prior legal regulated rent was less than \$300, the total vacancy increase shall be as calculated above, **plus** an additional \$100. If the prior legal regulated was at least \$300, and no more than \$500, in no event shall the total vacancy increase be less than \$100.

A RGB order may authorize an additional vacancy "allowance," which is separate from the statutory vacancy increase which an owner may charge. The tenant has the choice of whether the vacancy lease will be for a term of 1 or 2 years. For additional information see DHCR Fact Sheets #4 and 26.

3. SECURITY DEPOSITS

An owner may collect a security deposit no greater than one month's rent. However, if the present tenant moved into the apartment prior to the date the apartment first became rent stabilized, and the owner collected more than one month's rent as security, the owner may continue to retain a security deposit of up to two month's rent for that tenant only. When the rent is increased, the owner may charge an additional amount to bring the security deposit up to the full amount of the increased rent to which the owner is entitled.

A security deposit must be deposited in an interest bearing trust account in a banking organization in New York State. The tenant has the option of applying the interest to the rent, leaving the interest in the bank or receiving the interest annually. For additional information see DHCR Fact Sheet #9.

4. OTHER RENT INCREASES:

In addition to guidelines and statutory vacancy increases, the rent may be permanently increased based upon the following:

- (A) **New Services, New Equipment, Or Improvements Other Than Repairs - Individual Apartments** - If a new service or new equipment is added or an improvement is made, 1/40th of the cost of the new service, equipment or improvement may be added to the rent. If a new service or new equipment is added or an improvement made while the tenant is in occupancy, the owner must obtain the tenant's written consent to the increase. If a new service or new equipment is provided or an improvement made while the apartment is vacant, consent of the next tenant is not required, but such tenant may challenge the increase if it does not reflect the actual cost of the new service, new equipment or improvement. For additional information see DHCR Fact Sheet #12.
- (B) **Major Capital Improvements ("MCI")** - An owner is permitted a rental increase for building-wide major capital improvements, such as the replacement of a boiler, or new plumbing. The owner must receive approval from DHCR which will permit the owner to increase rents pro-rata by 1/84th of the cost of the improvement. The owner is not required to obtain tenant consent. Tenants are served with a notice of the owner's application and have a right to challenge the MCI application on certain grounds. For additional information see DHCR Fact Sheet #11.
- (C) **Hardship** - An owner may apply to increase the rents of all rent stabilized apartments based on hardship when:
 1. the rents are not sufficient to enable the owner to maintain approximately the same average annual net income for a current three-year period as compared with the annual net income which prevailed on the average over the period 1968 through 1970, or for the first three years of operation if the building was completed since 1968, or for the first three years the owner owned the building if the owner cannot obtain records for the years 1968-1970; or
 2. where the annual gross rental income does not exceed the annual operating expenses by a sum equal to at least 5% of such gross income.

If an application for a rent increase based on a major capital improvement or hardship is granted, the owner may charge the increase during the term of an existing lease only if the lease contains a clause specifically authorizing the owner to do so.

An increase based on a major capital improvement or hardship may not exceed 6% in any 12 month period. Any increase authorized by DHCR which exceeds these annual limitations may be collected in future years.

5. FOR VACANCY LEASES ONLY:

If this Rider is attached to a **RENEWAL LEASE**, the owner is **NOT** obligated to complete this section.

If this Rider is attached to a **VACANCY LEASE**, the owner **MUST** show how the rental amount provided for in such vacancy lease has been computed above the prior legal regulated rent by completing the following chart. The owner is not entitled to a rent which is more than the legal regulated rent. For additional information see DHCR Fact Sheet #5.

ANY INCREASE ABOVE THE PRIOR LEGAL REGULATED RENT MUST BE IN ACCORDANCE WITH ADJUSTMENTS PERMITTED BY THE RENT GUIDELINES BOARD AND THE RENT STABILIZATION

Status of Apartment and Last Tenant
(Owner to Check Appropriate Box - (A), (B), (C), or (D).)

- ☐ (A) This apartment was rent stabilized when the last tenant moved out.

Last Legal Regulated Rent \$ _____

I. Statutory Vacancy Increase

(i) Increase based on (1 year) (2 year) lease (circle one) (____%) \$ _____

(ii) Increase based on length of time (8 years or more) since last vacancy allowance or if no vacancy allowance has been taken, the number of years that the apartment has been subject to stabilization. (0.6% x number of years) \$ _____

(iii) Increase based on low rental amount. If applicable complete (a) or (b), but not both.

(a) Prior legal regulated rent was less than \$300 - additional \$100 increase, enter 100 \$ _____

(b) If the prior legal regulated rent was \$300 or more but less than \$500 (1) \$100
the sum of (i) and (ii) (2) _____
(1) minus (2). If less than zero, enter zero (3) _____

Amount from line(3) \$ _____

Vacancy Allowance, if permitted by NYC Rent Guidelines Board (____%) \$ _____

Guidelines Supplementary Adjustment, if permitted by NYC Rent Guidelines Board \$ _____

New Equipment, Service, Improvement for this apartment \$ _____

New Legal Regulated Rent \$ _____

Separate Charges or Credits: \$ _____

Surcharge (e.g., 421-a) \$ _____

Ancillary Service (e.g., garage) \$ _____

Other (specify _____) \$ _____

New Tenant's Rent \$ _____

or

- ☐ (B) This apartment was Rent Controlled at the time the last tenant moved out. This tenant is the first rent stabilized tenant and the rent agreed to and stated in the lease to which this Rider is attached is \$ _____. The owner is entitled to charge a market rent to the first rent stabilized tenant. The first rent charged to the first rent stabilized tenant becomes the initial legal regulated rent for the apartment under the rent stabilization system. However, if the tenant has reason to believe that this rent exceeds a "fair market rent", the tenant may file a "Fair Market Rent Appeal" with DHCR. The owner is required to give the tenant notice, on DHCR Form RR-1, of the right to file such an appeal. The notice must be served by certified mail. A tenant only has 90 days, after such notice was mailed to the tenant by the owner by certified mail, to file an appeal. Otherwise, the rent set forth on the registration form becomes the initial legal regulated rent.

- ☐ (C) The rent for this apartment is an Initial or Restructured Rent pursuant to a Government Program. (Specify Program _____) \$ _____.

- or -

- ☐ (D) Other _____ \$ _____.
(Specify - for example, a market or "first" rent after renovation to an individual apartment where the outer dimensions of the apartment have been substantially altered.)

6. RENT REGISTRATION:**(A) Initial**

An owner must register an apartment's rent and services with DHCR within 90 days from when the apartment first becomes subject to the RSL. To complete the rent registration process, the owner must serve the tenant's copy of the registration statement upon the tenant. The tenant may challenge the correctness of the rental as stated in the registration statement within 90 days of the certified mailing to the tenant of the tenant's copy of the registration statement.

(B) Annual

The annual update to the initial registration must be filed with DHCR by July 31st with information as of April 1st of each year. At the time of such filing, the owner must provide each tenant with the tenant's copy. The rental amount registered annually is challengeable by the filing with DHCR of a "*Tenant's Complaint of Rent Overcharge and/or Excess Security Deposit*" (DHCR Form RA-89), for a period of 4 years prior to the filing of the complaint. The rental history prior to this 4 year period will not be examined. Rent charged and paid on the date at the beginning of this 4 year period is the "base date rent."

(C) Penalties

Failure to register shall bar an owner from applying for or collecting any rent increases until such registration has occurred, except for those rent increases which were allowable before the failure to register. However, treble damages will not be imposed against an owner who collects a rent increase, but has not registered where the overcharge results solely because of such owner's failure to file a timely or proper initial or annual registration statement. Where the owner files a late registration statement, any rent increase collected prior to the late registration that would have been lawful except for the failure to timely and properly register will not be found to be an overcharge.

7. RENEWAL LEASES:

A tenant has a right to a renewal lease, with certain exceptions (see section 11 of this Rider, "When An Owner May Refuse To Renew A Lease").

At least 90 days and not more than 150 days before the expiration of a lease, the owner is required to notify the tenant in writing that the lease will soon expire. That notice must also offer the tenant the choice of a 1 or 2 year lease at the permissible guidelines increase. After receiving the notice, the tenant always has 60 days to accept the owner's offer, whether or not the offer is made within the above time period, or even beyond the expiration of the lease term.

Any renewal lease, except for the amount of rent and duration of its term, is required to be on the same terms and conditions as the expired lease, and a fully executed copy of the same must be provided to the tenant within 30 days from the owner's receipt of the renewal lease or renewal form signed by the tenant. If the owner does not return a copy of such fully executed Renewal Lease Form to the tenant within 30 days of receiving the signed renewal lease from the tenant, the tenant is responsible for payment of the new lease rent and may file a "*Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease*" (DHCR Form RA-90). DHCR shall order the owner to furnish the copy of the renewal lease or form. If the owner does not comply within 20 days of such order, the owner shall not be entitled to collect a rent guidelines increase until the lease or form is provided.

If a tenant wishes to remain in occupancy beyond the expiration of the lease, the tenant may not refuse to sign a proper renewal lease. If the tenant does refuse to sign a proper renewal lease, he or she may be subject to an eviction proceeding.

An owner may add to a renewal lease the following clauses even if such clauses were not included in the tenant's prior lease:

- (A) the rent may be adjusted by the owner on the basis of Rent Guidelines Board or DHCR Orders;
- (B) if the owner or the lease grants permission to sublet or assign, the owner may charge a sublet vacancy allowance for a sub-tenant or assignee, provided the prime lease is a renewal lease. However, this sublet vacancy allowance may be charged even if such clause is not added to the renewal lease. (Subletting is discussed in section 10 of this Rider);
- (C) (1) if the building in which the apartment is located is receiving tax benefits pursuant to Section 421-a of the Real Property Tax Law, a clause may be added providing for an annual or other periodic rent increase over the initial rent at an average rate of not more than 2.2 % of the amount of such initial rent per annum not to exceed nine, 2.2 percent increases. Such charge shall not become part of the legal regulated rent; however, the cumulative 2.2 percent increases charged prior to the termination of tax benefits may continue to be collected as a separate charge;
- (2) provisions for rent increases if authorized under Section 423 of the Real Property Tax Law, a clause may be added to provide for an annual or other periodic rent increase over the legal regulated rent if authorized by Section 423 of the Real Property Tax Law;
- (D) if the Attorney General, pursuant to Section 352-eeee of the General Business Law, has accepted for filing an Eviction Plan to convert the building to cooperative or condominium ownership, a clause may be added providing that the lease may be cancelled upon expiration of a 3 year period after the Plan is declared effective. (The owner must give the tenant at least 90 days notice that the 3 year period has expired or will be expiring.)

- (E) if a proceeding based on an Owner's Petition for Decontrol ("OPD") is pending, a clause may be added providing that the lease will no longer be in effect as of 60 days from the issuance of a DHCR Decontrol Order, or if a Petition for Administrative Review ("PAR") is filed against such order, 60 days from the issuance of a DHCR order dismissing or denying the PAR, (see section 17 of this Rider, "Renewal Leases Offered During Pendency of High Income Deregulation Proceedings").

8. RENEWAL LEASE SUCCESSION RIGHTS:

In the event that the tenant has permanently vacated the apartment at the time of the renewal lease offer, family members who have lived with the tenant in the apartment as a primary residence for at least two years immediately prior to such permanent vacating (one year for family members who are senior citizens and disabled persons), or from the inception of the tenancy or commencement of the relationship, if for less than such periods, are entitled to a renewal lease.

"Family Member" includes the husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant.

"Family member" may also include any other person living with the tenant in the apartment as a primary residence who can prove emotional and financial commitment and interdependence between such person and the tenant. Examples of evidence which is considered in determining whether such emotional and financial commitment and interdependence existed are set forth in the Rent Stabilization Code. Renewal lease succession rights are also discussed in detail in DHCR Fact Sheet #30.

9. SERVICES:

Except for complaints relating to heat, hot water, or other conditions requiring emergency repairs, prior written notification to the owner or managing agent of a service complaint is required. Application for a rent reduction may only be filed between 10 and 60 days after such notification, and a copy of the notification and proof of mailing and delivery must be attached to the application. Applications based on a lack of heat or hot water must be accompanied by a report from the appropriate city agency.

Certain conditions, examples of which are set forth in the Code, which have only a minimal impact on tenants, do not affect the use and enjoyment of the premises, and may exist despite regular maintenance of services. These conditions do not rise to the level of a failure to maintain required services. The passage of time during which a disputed service was not provided without complaint may be considered in determining whether a condition is de minimis. For this purpose, the passage of 4 years or more will be considered presumptive evidence that the condition is de minimis.

The amount of any rent reduction ordered by DHCR shall be reduced by any credit, abatement or offset in rent which the tenant has received pursuant to Sec. 235-b of the Real Property Law ("Warranty of Habitability") that relates to one or more conditions covered by the DHCR Order. For additional information see DHCR Fact Sheets #3 and 14.

10. SUBLETTING AND ASSIGNMENT:

A tenant has the right to sublet his/her apartment, even if subletting is prohibited in the lease, provided that the tenant complies strictly with the provisions of Real Property Law Section 226-b. Tenants who do not comply with these requirements may be subject to eviction proceedings. Compliance with Section 226-b is not determined by DHCR, but by a court of competent jurisdiction. If a tenant in occupancy under a renewal lease sublets his/her apartment, the owner may charge the tenant, the sublet allowance provided by the NYC Rent Guidelines Board. This charge may be passed on to the sub-tenant. However, upon termination of the sublease, the Legal Regulated Rent shall revert to the Legal Regulated Rent without the sublet allowance. The rent increase is the allowance provided by the NYC Rent Guidelines Board available when the tenant's renewal lease commenced, and it takes effect when the subletting takes place. If a tenant in occupancy under a vacancy lease sublets, the owner is not entitled to any rent increase during the subletting.

A tenant who sublets his/her apartment is entitled to charge the sub-tenant the rent permitted under the Rent Stabilization Law, and may charge a 10% surcharge payable to the tenant only if the apartment sublet is fully furnished with the tenant's furniture. Where the tenant charges the sub-tenant any additional rent above such surcharge and sublet allowance, if applicable, the tenant shall be required to pay to the sub-tenant a penalty of three times the rent overcharge, and may also be required to pay interest and attorney's fees. The tenant may also be subject to an eviction proceeding.

Assignment of Leases

In an assignment, a tenant transfers the entire remainder of his or her lease to another person (the assignee), and gives up all of his/her rights to reoccupy the apartment.

Pursuant to the provisions of Real Property Law Section 226-b, a tenant may not assign his/her lease without the written consent of the owner, unless the lease expressly provides otherwise. If the owner consents to the assignment of the lease, the owner may charge the assignee, as a vacancy allowance, the rent the owner could have charged had the renewal lease been a vacancy lease. Such vacancy allowance shall remain part of the Legal Regulated Rent for any subsequent renewal lease. The rent increase is the vacancy allowance available when the tenant's renewal lease commenced and it takes effect when the assignment takes place.

An owner is not required to have reasonable grounds to refuse to consent to the assignment. However, if the owner unreasonably refuses consent, the owner must release the tenant from the remainder of the lease, if the tenant, upon 30 days notice to the owner, requests to be released.

If the owner refuses to consent to an assignment and does have reasonable grounds for withholding consent, the tenant cannot assign and the owner is not required to release the tenant from the lease. For additional information see DHCR Fact Sheet #7.

11. WHEN AN OWNER MAY REFUSE TO RENEW A LEASE:

As long as a tenant pays the lawful rent to which the owner is entitled, the tenant, except for the specific instances noted, is entitled to remain in the apartment. An owner may not harass a tenant by engaging in an intentional course of conduct intended to make the tenant move from his/her apartment.

Without DHCR consent, the owner may refuse to renew a lease and bring an eviction action in Civil Court at the expiration of the lease on any of the following grounds:

- (A) the tenant refuses to sign a proper renewal lease offered by the owner;
- (B) the owner seeks the apartment in good faith for personal use or for the personal use of members of the owner's immediate family;
- (C) the building is owned by a hospital, convent, monastery, asylum, public institution, college, school, dormitory or any institution operated exclusively for charitable or educational purposes and the institution requires the apartment for residential or nonresidential use pursuant to its charitable or educational purposes; or
- (D) the tenant does not occupy the apartment as his or her primary residence. The owner must notify the tenant in writing at least 90 and not more than 150 days prior to the expiration of the lease term of the owner's intention not to renew the lease.

With DHCR consent, the owner may refuse to renew a lease upon any of the following grounds:

- (A) the owner seeks in good faith to recover possession of the apartment for the purpose of demolishing the building and constructing a new building; or
- (B) the owner requires the apartment or the land for the owner's own use in connection with a business which the owner owns and operates.

A tenant will be served with a copy of the owner's application and has a right to object. If the owner's application is granted, the owner may bring an eviction action in Civil Court.

12. EVICTION WHILE THE LEASE IS IN EFFECT:

The owner may bring an action in Civil Court to evict a tenant during the term of the lease because a tenant:

- (A) does not pay rent;
- (B) is violating a substantial obligation of the tenancy;
- (C) is committing or permitting a nuisance;
- (D) is illegally using or occupying the apartment;
- (E) has unreasonably refused the owner access to the apartment for the purpose of making necessary repairs or improvements required by law or authorized by DHCR, or for the purpose of inspection or showing. The tenant must be given at least 5 days notice of any such inspection or showing, to be arranged at the mutual convenience of the tenant and owner, so to enable the tenant to be present at the inspection or showing. A tenant cannot be required to permit access for inspection or showing if such requirement would be contrary to the lease; or
- (F) is occupying an apartment located in a cooperative or condominium pursuant to an Eviction Plan. (See subdivision (D) of section 7 of this Rider, "Renewal Leases".) A non-purchasing tenant pursuant to a Non-Eviction Plan may not be evicted, except on the grounds set forth in (A) - (E) above.

Tenants are cautioned that causing violations of health, safety, or sanitation standards of housing maintenance laws, or permitting such violations by a member of the family or of the household or by a guest, may be the basis for a court action by the owner.

13. COOPERATIVE AND CONDOMINIUM CONVERSION:

Tenants who do not purchase their apartments under a Non-Eviction Conversion Plan continue to be protected by Rent Stabilization. Conversions are regulated by the New York State Attorney General. Any cooperative or condominium conversion plan accepted for filing by the New York State Attorney General's Office will include specific information about tenant rights and protections. An informational booklet about the general subject of conversion is available from the New York State Attorney General's Office.

A Senior Citizen or a Disabled Person in a building which is being converted to cooperative or condominium ownership pursuant to an Eviction Plan is eligible for exemption from the requirement to purchase his/her apartment to remain in occupancy. This exemption is available to Senior Citizens, or to Disabled Persons with impairments expected to be permanent, which prevent them from engaging in any substantial employment. A Conversion Plan accepted for filing by the New York State Attorney General's office must contain specific information regarding this exemption.

14. SENIOR CITIZENS RENT INCREASE EXEMPTION PROGRAM:

This program is administered by the New York City Department for the Aging. Tenants or their spouses who are 62 years of age, or older, and whose annual "net" household income does not exceed the established income level may qualify for an exemption from Guidelines rent increases, hardship rent increases, and major capital improvement rent increases. This exemption will only be for that portion of the increase which causes the tenant's rent to exceed one-third of the "net" household income, and is not available for increases based on new services or equipment within the apartment. To ascertain the amount of the net household income limitation, contact the New York City Department for the Aging.

When a Senior Citizen is granted a rent increase exemption, the owner may obtain a real estate tax credit from New York City equal to the amount of the tenant's exemption. Notwithstanding any of the above, a Senior Citizen who receives a rent increase exemption is still required to pay a full month's rent as a security deposit. For additional information see DHCR Fact Sheet #21.

15. SPECIAL CASES AND EXCEPTIONS:

Some special rules relating to stabilized rents and required services may apply to newly constructed buildings which receive tax abatement or exemption, and to buildings rehabilitated under certain New York City, New York State, or federal financing or mortgage insurance programs. The rules mentioned in this Rider do not necessarily apply to rent stabilized apartments located in hotels. A separate Hotel Rights Notice informing permanent hotel tenants and owners of their basic rights and responsibilities under the Rent Stabilization Law is available from DHCR.

16. HIGH INCOME RENT DEREGULATION:

Upon the issuance of an Order by DHCR, apartments which: (1) are occupied by persons who have a total annual income in excess of \$175,000 per annum for each of the two preceding calendar years and (2) have a legal regulated rent of \$2,000 or more per month, shall no longer be subject to rent regulation ("High Income Rent Deregulation"). The Rent Stabilization Law permits an owner to file a Petition for High Income Rent Deregulation on an annual basis. As part of the process, the tenant will be required to identify all persons who occupy the apartment as their primary residence on other than a temporary basis, excluding bona fide employees of the tenant(s) and sub-tenants, and certify whether the total annual income was in excess of \$175,000 in each of the two preceding calendar years. If the tenant fails to provide the requested information to DHCR, an order of deregulation will be issued. If the tenant provides the requested information and certifies that the total annual income was not in excess of \$175,000, the NYS Department of Taxation and Finance will review whether the apartment is occupied by persons who have a total annual income in excess of \$175,000 in each of the two preceding calendar years.

17. RENEWAL LEASES OFFERED DURING PENDENCY OF HIGH INCOME DEREGULATION PROCEEDINGS:

Where a High Income Deregulation Proceeding is pending before DHCR and the owner is required to offer a renewal lease to the tenant, a separate rider may be attached to and served with the Rent Stabilization Law "Renewal Lease Form" (RTP-8). If so attached and served, it shall become part of and modify the Notice and Renewal Lease. The text of the rider is set forth below and may not be modified or altered without approval of DHCR.

NOTICE TO TENANT:

Pursuant to Section 5-a of the Emergency Tenant Protection Act, or Section 26-504.3 of the Rent Stabilization Law, the owner has commenced a proceeding before DHCR for deregulation of your apartment by filing a Petition by Owner for High Income Rent Deregulation on _____, 20____.

(Date)

That proceeding is now pending before DHCR. If DHCR grants the petition for deregulation, this renewal lease shall be cancelled and shall terminate after 60 days from the date of issuance of an order granting such petition. In the event that you file a Petition for Administrative Review (PAR) the order of deregulation, or if you have already filed such PAR and it is pending before DHCR at the time you receive this Notice, and the PAR is subsequently dismissed or denied, this renewal lease shall be cancelled and shall terminate after 60 days from the issuance by DHCR of an order dismissing or denying the PAR.

Upon such termination of this renewal lease, the liability of the parties for the further performance of the terms, covenants and conditions of this renewal lease shall immediately cease.

Appendix

Some agencies which can provide assistance

New York State Division of Housing and Community Renewal (DHCR)

DHCR is a State agency empowered to administer and enforce the Rent Stabilization Law and the Rent Control Law. Tenants should contact DHCR Public Information Offices listed below for assistance.

Queens

92-31 Union Hall Street
Jamaica, NY 11433
(718) 739-6400

Lower Manhattan (South side of 110th Street and below)

25 Beaver Street
New York, NY 10004
(212) 480-6700

Upper Manhattan (North side of 110th Street and above)

163 West 125th Street
New York, NY 10027
(212) 961-8930

Bronx

1 Fordham Plaza,
Bronx, NY 10458
(718) 563-5678

Brooklyn

55 Hanson Place, 7th Floor
Brooklyn, NY 11217
(718) 722-4778

Staten Island

60 Bay Street, 7th Floor
Staten Island, NY 10301
(718) 816-0277

Attorney General of the State of New York
120 Broadway, New York, NY 10271

Consumer Frauds and Protection Bureau - (212) 416-8345

- investigates and enjoins illegal or fraudulent business practices, including the overcharging of rent and mishandling of rent security deposits by owners.

Real Estate Financing Bureau - (212) 416-8121

- administers and enforces the laws governing cooperative and condominium conversions. Investigates complaints from tenants in buildings undergoing cooperative or condominium conversion concerning allegations of improper disclosure, harassment, and misleading information.

New York City Department of Housing Preservation and Development (HPD):

Division of Code Enforcement

Principal Office

100 Gold Street, New York, N.Y. 10038 - (212) 863-8000

- enforcement of housing maintenance standards.

New York City Central Complaint Bureau

215 West 125th Street, New York, N.Y. 10038 (212) 824-4328

- receives telephone complaints relating to physical maintenance, health, safety and sanitation standards, including emergency heat and hot water service. This service is available 24 hours per day. However, complaints as to emergency heat service are received only between October 1st and May 31st of each year.

New York City Rent Guidelines Board (RGB):

51 Chambers Street, Room 202, New York, N.Y. 10007 - (212) 385-2934

- promulgates annual percentage of rent increases for rent stabilized apartments and provides information on guidelines orders.

New York City Department for the Aging

SCRIE Division

2 Lafayette Street, 6th Floor, New York, New York, 10007 - (212) 442-1000

- administers the Senior Citizen Rent Increase Exemption program.

Copies of New York State and New York City rent laws are available in the business section of some public libraries. A person should call or write to a public library to determine the exact library which has such legal material.

LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR PREVENTION OF
LEAD-BASED PAINT HAZARDS—INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under six years of age resides or will reside in the dwelling unit (apartment) for which you are signing this lease/commencing occupancy. If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. **IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD.**

If a child under six years of age does not reside in the unit now, but does come to live in it at any time during the year, you must inform the owner in writing immediately. If a child under six years of age resides in the unit, you should also inform the owner immediately at the address below if you notice any peeling paint or deteriorated subsurfaces in the unit during the year.

Please complete this form and return one copy to the owner or his or her agent or representative when you sign the lease/commence occupancy of the unit. Keep one copy of this form for your records. You should also receive a copy of a pamphlet developed by the New York City Department of Health explaining about lead-based paint hazards when you sign your lease/commence occupancy.

CHECK ONE: ☐ A child under six years of age resides in the unit.
 ☐ A child under six years of age does not reside in the unit.

_____ (Occupant signature)

Print occupant's name, address and apartment number. _____

Certification by owner: I certify that I have complied with the provisions of §27-2056.6 of Article 14 of the Housing Maintenance Code and the rules promulgated thereunder relating to duties to be performed in vacant units, and that I have provided a copy of the New York City Department of Health pamphlet concerning lead-based paint hazards to the occupant.

_____ (Owner signature)

RETURN THIS FORM TO: _____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS
OWNER COPY/OCCUPANT COPY

ANNUAL NOTICE FOR PREVENTION OF LEAD-BASED PAINT HAZARDS—
INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under six years of age resides or will reside in your dwelling unit (apartment). If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. **IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD.**

If a child under six years of age does not reside in the unit now, but does come to reside in it at any time during the year, you must inform the owner in writing immediately. If a child under six years of age lives in the unit you should also inform the owner immediately if you notice any peeling paint or deteriorated surfaces in the unit during the year. You may request that the owner provide you with a copy of any records required to be kept as a result of a visual inspection of your unit.

Please complete this form and return one copy to the owner or his or her agent or representative by March 1st. Keep one copy of this form for your records.

CHECK ONE: ☐ A child under six years of age resides in the unit.
 ☐ A child under six years of age does not reside in the unit.

_____ (Occupant signature)

Print occupant's name, address and apartment number. _____

_____ (Owner signature)

RETURN THIS FORM TO: _____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS
OWNER COPY/OCCUPANT COPY



New York City Department of Health
Lead Poisoning Prevention Program

A Guide to New York City Local Law 38 of 1999

Keeping Your Home Safe from Lead-Based Paint Hazards

This guide outlines important changes to a New York City law to protect children under six years of age from becoming lead poisoned as a result of exposure to lead-based paint hazards in their homes. It includes a summary of your rights and obligations as a tenant and your landlord's duties under the law.

What is lead?

Lead is a poisonous metal. It is found in many places, especially in paint in homes built before 1960. It can also be in dust, water and soil.

Can lead affect your child's health?

Yes. Lead is a poison. Too much lead in the body can cause a serious health risk to children. Lead poisoning can impair children's health, learning and behavior.

Most children who have elevated blood lead levels do not have symptoms. You must have your child tested to learn if your child is at risk for health problems related to lead poisoning.

How can children get lead poisoning?

Most commonly, lead-based paint is the cause of lead poisoning. It may be found in older homes in NYC (especially those built before 1960). When this paint peels, or when it rubs against another surface, it can break into paint chips or crumble into dust. Young children can swallow lead dust and paint chips when they put fingers, toys, or pacifiers in their mouths. This normal hand to mouth behavior in children under six makes them more likely to get lead poisoned.

Less commonly, lead that can cause lead poisoning also may be found in water, dirt (soil), traditional medicines, cosmetics, cans, pottery and as a by-product of some adult occupations and hobbies.

Should your child be tested for lead poisoning?

Yes. Your child's doctor must, by law, test your child at one and two years of age. Your child also should be tested at any other time between six months and six years of age when your doctor has determined that your child is at risk for lead poisoning. You should inform your doctor if you reside in a home with peeling paint that may contain lead or think that your child may have been exposed to some other lead hazard.

What does the law require your landlord to do to prevent lead poisoning?

If your building has three or more apartments and was built before 1960, your landlord must:

- Ask you if a child under six years of age reside in your home when you first sign or renew a lease or move into the apartment. The landlord will keep this information on record.
- Send you a notice once a year (like the one you receive for window guards) asking you if a child under six years of age resides in the home.
- Visually inspect your apartment once a year if a child under six years of age resides in your home.

- Correct any peeling lead-based paint or lead-based paint on a deteriorating subsurface, following the safe work practices described in the Exclusive Interim Controls section, if a child under six years of age resides in your home.
- Adjust any painted doors or windows so that they do not stick and cause paint to peel or chip when opened or closed. The safe work practices (Exclusive Interim Controls) described in this brochure must be followed if a child under six years of age resides in your home.
- Correct any lead-based paint violations issued by the Department of Housing Preservation and Development (HPD) using safe work practices (described in the Exclusive Interim Controls section).

What is a lead-based paint hazard?

If you reside in a multiple dwelling (three or more apartments) built before 1960, in which a child under six years of age resides, a lead-based paint hazard under City law is:

- Peeling (chipped or cracking or deteriorated) paint
- Paint on a subsurface (plaster wall or window for example) that is deteriorating (in poor condition)

Does your landlord have to do anything special to correct lead-based paint hazards in a vacant apartment?

Whenever any apartment in a multiple dwelling (three or more apartments) built before 1960 becomes vacant, the landlord must repair all peeling paint and any conditions that might be causing the paint to peel.

What should you, the tenant do to make sure that your child is protected from lead-based paint hazard?

- It is important that you notify your landlord if a child under six years of age resides in or moves into your apartment.
- When you get the annual notice asking if there is a child under six years of age residing in your home, you should complete and return it to your landlord.
- Let your landlord into your apartment to inspect and repair lead-based paint hazards.
- Notify your landlord as soon as you see peeling paint, even if this happens after you have returned the annual notice, your or your apartment was inspected, or the hazard was repaired previously by the landlord.
- If the person repairing a lead-based paint hazard is not following the safe work practices described in the Exclusive Interim Controls, **call the New York City Department of Health Lead Poisoning Prevention Program, Lead Safe Abatement Unit at: (212) 676-6355**

How is the landlord expected to repair a lead-based paint hazard?

If your landlord receives a lead-based paint hazard violation from HPD, or discovers lead-based paint hazards during an inspection, or if you tell your landlord about a lead-based paint hazard, your landlord must safely repair it using "Exclusive Interim Controls." The "Exclusive Interim Controls" are safe work practices described in the Exclusive Interim Controls section.

November 1999

For more information about Lead Poisoning, call 212-BAN-LEAD.



New York City Department of Health
Lead Poisoning Prevention Program

A Guide to New York City Local Law 38 of 1999

Exclusive Interim Controls (Safe Work Practices)

Before Work Starts

1. The work areas must be sealed off to prevent dwelling unit (apartment) occupants from entering the work area, where practicable. This is to be kept in place until the work and final clean up are completed.



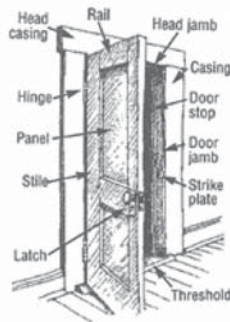
2. All furniture and other items in the work area must be moved away from where the work is being done or covered with thick plastic or equivalent sheeting.

The floor in and around the work area must be covered with thick plastic or equivalent sheeting. Before removing furniture or other items from the work areas the furniture must be cleaned with a special vacuum called a High Efficiency Particulate Air (HEPA) Filter vacuum.

Doing the Work

3. All plastic or like sheeting, drop cloths and other supplies, equipment and disposable clothing that are used in the work areas shall remain in the work area or be stored in a safe manner to minimize exposure to occupants.
4. Peeling paint or painted friction surfaces that bind (doors and windows subject to friction or abrasion) must be wet scraped using a scraper and water mister to reduce dust and other work-related debris. Cracked or peeling subsurfaces (the surfaces that have been painted) must be repaired before they are repainted.
5. All surfaces and floors in the work area must be HEPA vacuumed or detergent washed, prior to repainting, to remove any dust that may have collected when the work was done. All debris should be disposed of in a safe manner.
6. All paints, thinners, solvents, chemical strippers or other such flammable materials must be kept in the work area and stored in their original containers.

7. All doors, including cabinet doors, must be adjusted to ensure that they are properly hung, so that painted surfaces do not rub against each other, causing paint to chip.



8. All windows must be adjusted to ensure that they are properly hung, so that painted surfaces do not rub against each other, causing paint to chip.

Daily Clean Up

9. The work area must be thoroughly HEPA vacuumed or detergent washed at the end of each day. A visual examination must be done at the end of each workday to ensure that no peeling paint, paint chips, dust or other work-related debris have been released.

Final Clean Up

10. Your landlord is responsible for:
- Supervising the work area to minimize the spread of peeling paint, paint chips and dust or other work debris from the work area; and
 - Advising you not to enter the work area until the work has been finished.
11. When the work is finished, all plastic or like sheeting, drop cloths or other materials are to be removed in a safe manner. All surfaces exposed to peeling paint, paint chips, dust or other work related debris during the course of work shall be HEPA vacuumed or detergent washed starting with ceilings, then down the walls and across the floors.

Dust Wipe Sampling

Dust Wipe Sampling is only required when the work has been ordered by HPD.

12. When lead-based paint hazards have been corrected on any interior wood trim, door, or window the landlord is required to take a surface dust wipe sample on the floor in and around (immediately adjacent to) the work area.
13. When lead-based paint hazards have been corrected on any interior wood trim or door near or immediately adjacent to a window, a surface dust wipe sample shall be conducted on the windowsill and window well in and around (immediately adjacent to) the work area.

Landlords May Decide to Follow the Health Code Procedures Specified in Section 173.14 Instead of Exclusive Interim Controls

14. Your landlord may elect to correct a lead-based paint violation by following the lead safe abatement procedures that are found in the NYC Health Code Section 173.14, instead of using the Exclusive Interim Controls.
15. When an owner receives an HPD violation and does not comply with the orders in a timely manner*, the owner will be required to follow additional lead safe abatement procedures found in NYC Health Code Section 173.14.



* Local Law 38 requires the landlord to correct violations within 21 days of service of the violations. The owner may request and may receive an extension of up to 45 days to complete the work by applying in writing to HPD, using the form provided with the notice of violations.

Where to Get Help**Who can I call to report peeling paint violations?**

Call the Department of Housing Preservation and Development

(212) 960-4800

Who can I call to get my water tested for lead?

Call the NYC Department of Environmental Protection:

(718) DEP-HELP

(718) 337-4357

Who can I call if the person repairing lead paint hazards is making a mess or to report unsafe work practices (failure to use Exclusive Interim Controls) when lead-based paint hazards are being repaired?

Call the NYC Department of Health Lead Poisoning Prevention Program Lead Abatement Safety Unit:

(212) 676-6355

An inspector will be sent to your home. The landlord or contractor may be issued a fine or an order to correct the violations if the inspector finds violations.

Your landlord cannot evict you for filing a peeling paint complaint or reporting unsafe work practices.

Who can I call:

- **If I have questions or concerns about the contents of this brochure? or**
- **If I want additional information on the lead safe abatement procedures in Section 173.14 of the Health Code?**
- **For information on how and where to get my child screened, tested, diagnosed or treated, if necessary for lead?**
- **For information about lead poisoning**

Call the:

New York City Department of Health Lead Poisoning Prevention Program Hotline

(212) BAN-LEAD

(212) 226-5323 or

TDD (212) 442-1820.

We are here to help you with any questions you may have about lead poisoning, lead-based paint hazards and the safe work practices (Exclusive Interim Controls) that must be used when repairing lead-based paint hazards. **CALL US!**

(212) BAN-LEAD

November 1999

For more information about Lead Poisoning, call 212-BAN-LEAD.

RENEWAL LEASE FORM

Owners and Tenants should read **INSTRUCTIONS TO OWNER** and **INSTRUCTIONS TO TENANT** on reverse side before filling out or signing this form

THIS NOTICE FOR RENEWAL OF LEASE AND RENEWAL LEASE FORM ISSUED UNDER SECTION 2523.5(a) OF THE RENT STABILIZATION CODE. ALL COPIES OF THIS FORM MUST BE SIGNED BELOW AND RETURNED TO YOUR LANDLORD WITHIN 60 DAYS.

Tenant's Name _____ Dated: _____ 20 _____

Address _____ Apt. No. _____ Owner's/Agent Name _____

County _____ Zip Code _____ Mailing Address (No. & Street) _____

City, State & Zip Code _____

1. The owner hereby notifies you that your lease will expire on: ____ / ____ / ____

PART A - OFFER TO TENANT TO RENEW

2. You may renew this lease, for one or two years, at your option, as follows:

Column a Renewal Term	Column b Legal Rent on Sept. 30th Preceding Commencement Date of this Renewal Lease	Column c Authorized Applicable Guideline Increase (If unknown, check box and see below)* ☐	Column d Applicable Guideline Supplement, if any	Column e Lawful Rent Increase Adj. if any, effective after Sept. 30th indicated in Column b	Column f Separate charge, if any (specify under item 4 below)	Column g New rent (if lower rent is to be charged check box and see item 5 below)* ☐
1 Year	\$ _____	(%) \$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2 Years	Same as above	(%) \$ _____	\$ _____	\$ _____	\$ _____	\$ _____

* If applicable guideline rate is unknown at time offer is made check box in column c and enter current guideline which will be subject to adjustment when rates are ordered.

** The rent provided for in this renewal lease may be increased or decreased by order of the Division of Housing and Community Renewal (DHCR) or the Rent Guidelines Board (RGB).

3. Security Deposit:

Current Deposit: \$ _____

Additional Deposit Required - 1 year lease: \$ _____

Additional Deposit Required - 2 year lease: \$ _____

4. Specify separate charges if applicable:

Air conditioner - Electricity Charge: \$ _____ /mo.

421 a(2.2%): \$ _____ /mo:

Other: \$ _____ /mo:

5. Lower Rent to be charged, if any, \$ _____.

Agreement attached: Yes ☐ No ☐

6. This renewal lease shall commence on ____ month ____ day ____ year, which shall not be less than 90 days nor more than

150 days from the date of mailing or personal delivery of this Renewal Lease Form. This Renewal Lease shall

terminate on ____ month ____ day ____ year (1 year lease) or ____ month ____ day ____ year (2 year lease.)

7. This renewal lease is based on the same terms and conditions as your expiring lease, except that ____ lawful

provisions attached and ____ written agreements between owner and tenant have been added. (Indicate in

the blank spaces as applicable, the number of additional provisions or written agreements attached).

This form becomes a binding lease renewal when signed by the owner below and returned to the tenant. A rider setting forth the rights and obligations of tenants and landlords under the Rent Stabilization Law must be attached to this lease when signed by the owner and returned to the tenant.

PART B - TENANT'S RESPONSE TO OWNER

Tenant: Check and complete where indicated one of two responses below after reading instructions on reverse side. Then date and sign your response below. You must return this Renewal Lease Form to the owner in person or by regular mail, within 60 days of the date this Notice was served upon you by the owner. Your failure to do so may be grounds for the commencement of an action by the owner to evict you from your apartment.

I (we) the undersigned tenant(s), agree to enter into a ____ year renewal lease at a monthly rent of \$ ____.

This renewal lease is based on the same terms and conditions as my (our) expiring lease, and further attached lawful provisions and attached written agreements, if any (see item 7 under PART A above).

I (we) will not renew my (our) lease and (we) intend to vacate the apartment on the expiration date of the present lease indicated above.

Dated: _____ 20 _____

Tenant's Signature(s): _____

Dated: _____ 20 _____

Owner's Signature(s): _____

INSTRUCTIONS TO OWNER

At least two copies of this completed Renewal Lease Form must be mailed to the tenant in occupancy or personally delivered not more than 150 days and not less than 90 days prior to the end of the tenant's lease term. The owner shall also make this Form available in Spanish upon request of the tenant.

If the owner offers a Renewal Lease less than 90 days prior to the expiration of the existing lease, the lease term selected by the tenant shall begin at the tenant's option either (1) on the date a renewal lease would have begun had a timely offer been made or (2) on the first rent payment date occurring no less than 90 days after the date that the owner does offer the lease to the tenant. The guidelines rate applicable for such lease shall be no greater than the rate in effect on the commencement date of the lease for which a timely offer should have been made, and the increased rental shall not begin before the first rent payment date occurring no less than 90 days after such offer is made.

The owner must fully complete PART A on the reverse side of this Form explaining how the new rent has been computed. Any rent increase must not exceed the applicable Rent Guidelines Board adjustment(s) plus other adjustments authorized by the Rent Stabilization Code.

Failure to file a current registration for this housing accommodation with DHCR bars the collection of any guidelines increase after such registration should have been filed. This sanction is lifted prospectively upon the filing of a proper registration.

This Renewal Lease must be offered on the same terms and conditions as the expiring lease, except for such additional provisions as are permitted by law or the Rent Stabilization Code which must be set forth by the owner and attached to this Form. If there are any additional lawful agreements between the owner and tenant, a copy signed by both parties must be attached to this Form.

The tenant must return to the owner all copies of this Form, completed and signed by the tenant in **PART B** on the reverse side of this Form.

The owner must furnish the tenant with a fully executed copy of this Renewal Lease Form bearing the tenant's and owner's signatures in **PART B**, and a copy of the DHCR Lease Rights Rider, within 30 days of the owner's receipt of this Form signed by the tenant. The owner shall also make the Lease Rights Rider available in Spanish upon request of the tenant. Service of this fully executed Form, upon the tenant, constitutes a binding renewal lease. If the owner fails to furnish the tenant with a fully executed copy of this Form within 30 days of receipt of the Form signed by the tenant, the tenant shall continue to have all rights afforded by the Rent Stabilization Law and Code, and the owner will be barred from commencing any action or proceeding against the tenant based upon non-renewal of lease.

INSTRUCTIONS TO TENANT

(Read Owner's and Tenant's Instructions carefully before completing this Renewal Lease Form)

If you wish to accept this offer to renew your lease, you must complete and sign this Renewal Lease Form in the space provided in **PART B** on the reverse side of this Form, and you must return all copies of the signed Lease Form to the owner in person or by regular mail within 60 days of the date this Form was served upon you. You may wish to make a copy for your own records. *If you are the recipient of a Senior Citizen Rent Increase Exemption, you must select a one- or two-year lease, or you will lose this exemption.*

Before you complete and sign **PART B** and return this Renewal Lease Form, be sure to check the number of additional lawful provisions and written agreements indicated under item 7 on the reverse side of this Form and that the same number of lawful provisions and written agreements have been attached by the owner to this Form. Please read all attachments carefully. If such other lawful provisions appear, they are part of this lease renewal offer and renewal lease. If there are any lawful agreements between you and the owner, attached copies must be signed by both parties.

If you question the Legal Regulated Rent or the rental adjustments specified on the front of this Renewal Lease Form, ask the owner for an explanation. Or, you may telephone the NYS Division of Housing and Community Renewal (DHCR), Office of Rent Administration, at (718) 739-6400, before the end of the 60 day period from the date this Form was served upon you.

If the owner agrees to a rent which is lower than the legal regulated rent, this lower amount should be entered in item 5 on the reverse side of this Form, and a signed copy of the agreement should be attached. You may not change the content of this Renewal Lease Form without the owner's written consent.

Your acceptance of this offer to renew shall constitute a renewal of the present lease for the term of years and rent accepted, subject to any other lawful changes which appear in writing on the attachments to this Form, and subject also to payment of the new rent and additional security, if any. Such additional security shall be deposited by the owner in the manner provided for on initial occupancy.

If you do not sign and return this Renewal Lease Form at the new rent (which appears in column "g" or item 5 on the reverse side of this Form) in accordance with the instruction, and within the prescribed 60 day period, the owner may have grounds to start proceedings to evict you from your apartment.

You may file a complaint with DHCR, if you have not received a copy of the DHCR Lease Rights Rider with this Renewal Lease Form when signed and returned to you by the owner, or a Spanish version of this Form or the Rider after requesting it from the owner, or, if you do not receive a fully executed copy of this Renewal Lease within 30 days from the owner's receipt of a copy of this Form signed by you.

State of New York
Division of Housing and Community Renewal
Office of Rent Administration/Gertz Plaza
92-31 Union Hall Street
Jamaica, New York 11433
Web Site: www.dhcr.state.ny.us



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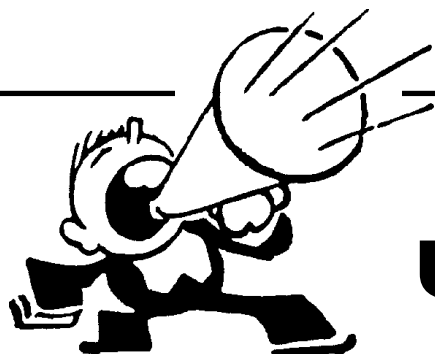
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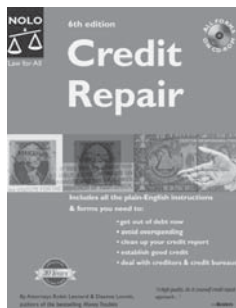
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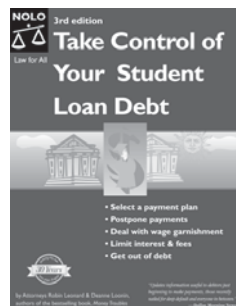
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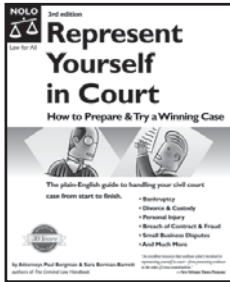
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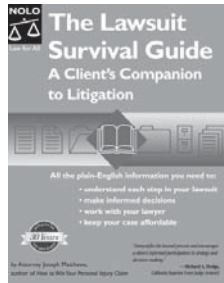
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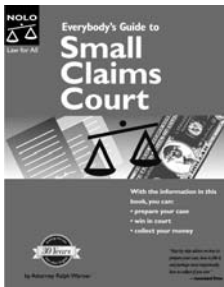
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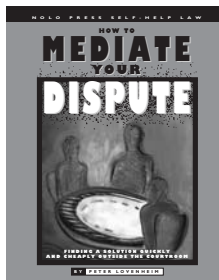


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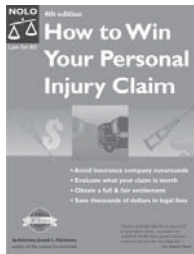
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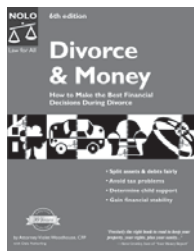


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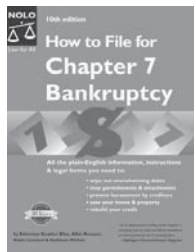
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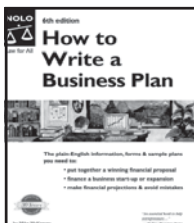


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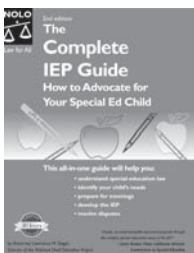


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About The Author

Mary Ann Hallenborg is a practicing attorney specializing in New York landlord-tenant law. She is the author of *The New York Landlord's Law Book*, published by Nolo, and the publisher and managing editor of *Landlord-Tenant Practice Reporter*, a monthly law journal for the New York real estate community. She also teaches landlord-tenant law at the New York University's Real Estate Institute.